SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 67

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOUIS BRUNO

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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A In the United States Circuit Court of Appeals

For the Third Circuit

No. 9055

UNITED STATES OF AMERICA, APPELLEE,

vs.

LOUIS BRUNO, APPELLANT

On Appeal from Judgment of the United States District Court for the District of New Jersey

Appendix to appellant's brief

Filed Nov. 17, 1945

1 In United States District Court, District of New Jersey

Docket entries

1944

Aug. 11.—Criminal Information for sale of wastepaper over ceiling, filed.

Aug. 11.—Order granting leave to file (Same Paper) (Fake).

Aug. 11.—Notice of Allocation, filed (Newark).

Sept. 5.—Plea—Not Guilty. (Waring) Bail continued. (Waring.)

1945

Jan. 24.—Trial moved before Hon. Thomas F. Meaney, Judge and Jury.

Jan. 24.—Ordered trial adjourned to Jan. 25, 1945, at 10:00 A. M.

Jan. 25.—Trial continued.

Jan. 25.—Ordered motions for a dismissal of the indictment; or in the alternative a directed verdict of not guilty as to each count, denied.

Jan. 25.—Verdict: Guilty as to counts 1, 2, 3, 4, and 5. Ordered bail continued—Ordered to report to probation office. Sentence date—February 16, 1945. (M)

Mar. 2.—Ordered motion in arrest of Judgment, denied. (M)

Mar. 2.—Sentence: Six months and a fine of $500.00 on Indictment. (M)

Mar. 2.—Ordered motion to fix bail pending appeal, granted. (M)

Mar. 2.—Ordered bail fixed at $1,500.00. (M)
2 Mar. 2.—Notice of Appeal, filed.
Mar. 2.—Judgment and Commitment, filed. (M)
Mar. 21.—Consent Order for Preparation of Record on Appeal, filed. (M) (6/15/45).

* * * * *

In United States District Court

Criminal information

INFORMATION

At the April 1944 term of the District Court of the United States of America for the District of New Jersey, held at Newark in said District, comes the United States of America, by Thorn Lord, United States Attorney, in and for said District, and, leave of the Court having first been obtained, informs the Court as follows:

FIRST COUNT

1. At all times hereinafter set forth, the defendant Louis Bruno was the agent, employee, and manager of Theresa Bruno, individually and trading under the name of T. Bruno Paper Stock, at Hackensack, New Jersey, engaged in business as a dealer acquiring wastepaper for the purpose of sale as wastepaper, and as such became and was subject and amenable to the provisions of Maximum Price Regulation 30, as amended, issued by the Office of Price Administration pursuant to the authority contained in the Emergency Price Control Act of 1942.

2. On or about March 31, 1944, at Hackensack, in Bergen County,
3 State and District of New Jersey, and within the jurisdiction of this Court, Louis Bruno did wilfully, knowingly, and unlawfully sell certain wastepaper, to wit: 25,979 pounds of old corrugated containers, to James Carrano Sons, Inc., the same being shipped, consigned, and delivered to Ohio Boxboard Company at Rittman, Ohio, via railroad freight car C. B. Q. 22160, at a price of $1.75 per hundredweight or $454.63, the same being a higher price than the maximum price of $1.15 per hundredweight or $298.25, as set forth in and permitted by Maximum Price Regulation No. 30 as issued by the Office of Price Administration, and as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

SECOND COUNT

And Thorn Lord, United States Attorney as aforesaid, further informs this Court,

1. He repeats the allegations of paragraph one of the first count.

2. That on or about March 31, 1944, at Hackensack, in Bergen County, State and District of New Jersey and within the jurisdiction of this Court, Louis Bruno did wilfully, knowingly, and unlawfully sell certain wastepaper, to wit: 24,040 pounds of corrugated wastepaper, to James Carrano Sons, Inc., the same being shipped, consigned, and delivered to Ohio Boxboard Company at Rittman, Ohio via railroad freight car P. A. 92203 at a price of $1.75 per hundredweight or $420.70, the same being a higher price than the maximum price of $1.15 per hundredweight or $276.46, as set forth in and permitted by Maximum Price Regulation
4 No. 30 as issued by the Office of Price Administration, and as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States:

THIRD COUNT

And Thorn Lord, United States Attorney as aforesaid, further informs this Court,

1. He repeats the allegations of paragraph one of the first count.

2. That on or about February 10, 1944, at Hackensack, in Bergen County, State and District of New Jersey and within the jurisdiction of this Court, Louis Bruno did wilfully, knowingly, and unlawfully sell certain wastepaper, to wit: 28,080 pounds of corrugated wastepaper, to James Carrano Sons, Inc., the same being shipped, consigned and delivered to Taggard Corporation, Watertown, New York via railroad freight car B. & O. 385622 at a price of $1.75 per hundred weight or $491.40, the same being a higher price that the maximum price of $1.15 per hundred weight or $322.98, as set forth in and permitted by Maximum Price Regulation No. 30 as issued by the Office of Price Administration, and as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FOURTH COUNT

And Thorn Lord, United States Attorney as aforesaid, further informs this Court,

1. He repeats the allegations of paragraph one of the first count.

5 2. That on or about March 1, 1944, at Hackensack, in Bergen County, State and District of New Jersey and within the jurisdiction of this Court, Louis Bruno did wilfully, knowingly, and unlawfully sell certain wastepaper, to wit: 33,520 pounds of corrugated wastepaper, to James Carrano Sons, Inc., the same being shipped, consigned and delivered to Taggart Corporation, Watertown, New York, via railroad freight car S. P.

96472 at a price of $1.75 per hundred weight or $586.60, the same being a higher price than the maximum price of $1.15 per hundred weight or $385.48, as set forth in and permitted by Maximum Price Regulation No. 30 as issued by the Office of Price Administration, and as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FIFTH COUNT

And Thorn Lord, United States Attorney as aforesaid, further informs this Court,

1. He repeats the allegations of paragraph one of the first count.

2. That on or about March 22, 1944, at Hackensack, in Bergen County, State and District of New Jersey and within the jurisdiction of this Court, Louis Bruno did wilfully, knowingly, and unlawfully sell certain wastepaper, to wit: 45,115 pounds of corrugated wastepaper, to James Carrano Sons, Inc., the same being shipped, consigned and delivered to Taggart Corporation, Watertown, New York, via railroad freight car K. C. S. 25293 at a price of $1.75 per hundred weight or $789.51, the same being
6 a higher price than the maximum price of $1.15 per hundred weight or $518.82, as set forth in and permitted by Maximum Price Regulation No. 30 as issued by the Office of Price Administration, and as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

THORN LORD,
United States Attorney.
EDGAR H. ROSSBACH,
Assistant United States Attorney.

7 In United States District Court

Testimony

Appearances: For the United States of America: Edgar H. Rossbach, Esq., Assistant U. S. Attorney. For the Defendant: George R. Sommer, Esq.

Tried before Hon. Thomas F. Meaney, and a Jury, at the Federal Building, Newark, N. J., on Wednesday, January 24, 1945.

Mr. ROSSBACH. We move the trial of Information 2604c, United States of America vs. Louis Bruno.

The COURT. You may call the jury.

(A jury was impaneled.)

The COURT. The balance of the jurors will be excused until tomorrow morning at the usual time and they may leave now if they

so desire. I think we shall recess now until a quarter before two; you will have your lunch now and come back at quarter before two, at which time we will resume the trial.

(Noon recess.)

AFTERNOON SESSION

The COURT. Is the defendant here?

Mr. SOMMER. Yes, sir.

The COURT. Is the Government ready?

Mr. ROSSBACH. Yes, sir.

8 The COURT. Is the defense ready?

Mr. SOMMER. Yes, sir.

The COURT. Swear the jury.

(The jury was sworn.)

(Mr. Rossbach opened on behalf of the Government.)

Mr. ROSSBACH. With the Court's permission I will call Mr. Carrano.

JOSEPH V. CARRANO, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Carrano, where do you live?—A. I live in Brooklyn.

Q. In what business are you engaged?—A. Waste paper business.

Q. Located where?—A. New York City.

Q. For how long a period of time have you been engaged in that business?—A. Thirty years.

Q. What particular phase of the waste paper business do you engage in?—A. We are what are known as wholesale dealers and brokers.

Q. What does that mean with relation to your activity in the trade?—A. That means we buy waste paper from other dealers and sell it to the consuming mills.

Q. Now, specifically directing your attention to the defendant in this case, Louise Bruno, did you or your company have any transactions in waste paper with him?—A. Yes, sir.

9 Q. And was that as you have described it with you in the capacity as dealer or broker, and he in the capacity as transferer to you of the waste paper?—A. Yes, sir.

Q. Do you have the records of your dealings with him with you?—A. I have some records; yes.

Q. Will you please refer to the date of March 31 in 1944. Will you tell us whether on that date you had a transaction with Bruno with relation to the purchase of waste paper?—A. Yes; we did.

Q. What did you negotiate for on that day with Bruno?—A. We purchased a carload of No. 1 assorted kraft, 35,310 pounds.

Q. Were you submitted an invoice by Bruno to cover that sale?—A. Yes, sir.

Q. I show you what purports to be a photostatic copy of an invoice and ask you whether you can identify that?—A. Yes, sir.

Q. What is it?—A. That is an invoice from T. Bruno Paper Stock Company to us.

Q. And what does it represent?—A. It represents the purchase of a carload of waste paper.

Q. The carload that you have just described?—A. Yes, sir.

Q. And as a result of this invoice and that particular transaction, did you make a payment to Bruno for that delivery?—A. Yes, sir.

Q. What was the amount that you paid him?—A. $635.59.

Q. The same amount shown on the invoice?—A. Yes, sir.

Mr. Rossbach. At this time I would like to offer in evidence the photostatic copy. I am suggesting this if your Honor please, so that the witness may take back his original copy.

The Court. All right.

(Aside to the witness:) What is that one thirty-five or one eighty-five?

The Witness. It is one seventy-five.

Mr. Sommer. No objection.

(Received and marked "Exhibit G-1.")

Q. Now, Mr. Carrano, referring you specifically to that particular shipment, to whom was that consigned?—A. Well, it was either consigned to Ohio Box Board or Taggart Corporation. I cannot tell exactly. Do you have anything——

Q. I show you what appears to be an invoice directed from your company?—A. That went to Ohio Box Board.

Q. And that applies to the same shipment which is represented by Exhibit G-1?—A. Yes, sir.

Mr. Rossbach. I ask that this be marked for identification.

(Marked "G-2" for identification.)

The Court. What is that price on that, $1.75?

The Witness. $1.75 per hundredweight.

Q. That is the equivalent of how much per ton?—A. $35 per ton.

Q. And now I show you an invoice from T. Bruno Paper Stock Company, addressed to James Carrano's Sons, and ask you whether you can further identify that?—A. Yes, sir.

Q. And what does that represent?—A. That is the same as the other instance, purchase of a carload of wastepaper of T. Bruno, shows the car number there, and the grade and the price.

Q. And the grade was what?—A. The grade was No. 1 Assorted Kraft.

11 Q. And the price $1.75 per hundredweight; right?—A. Yes, sir.

Q. Now, I then show you an invoice, or photostatic copy of invoice on your stationery and ask you whether that applies to the same shipment and discloses the consignee?—A. Yes, sir.

Q. And to whom was that consigned?—A. That was consigned to the Ohio Box Board at Rittman, Ohio.

Mr. ROSSBACH. I am offering invoice of T. Bruno Paper Stock Company to James Carrano's Sons.

Mr. SOMMER. No objection.

The COURT. It will be received and marked in evidence.

(Received and marked "Exhibit G-3.")

Mr. ROSSBACH. And at this time I ask that the exhibit which the witness had identified as his own invoice be marked for identification.

(Marked "G-4" for Identification.)

Q. Mr. Carrano, as a result of receiving the invoice which is identified now as Exhibit G-3 in evidence, did you make a payment for that particular delivery to Bruno?—A. Yes, sir.

Q. Will you tell us the amount you paid?—A. $461.16.

Q. And that was the exact amount represented and shown on the invoice?—A. On Bruno's invoice.

Q. Right. And that was based upon the Assorted Kraft at $1.75 per hundredweight?—A. Yes, sir.

Q. I show you another invoice on the paper of T. Bruno Paper Stock Company addressed to James Carrano's Sons, and ask you if you can further identify that?—A. Yes, sir.

Q. As being what?—A. That is the purchase of waste paper from T. Bruno showing #1 Assorted Kraft, total weight and contents.

12 Q. Do your records show to whom that was consigned?—A. I don't think the records show. I can show you copy of my invoice. Yes; that was consigned to Taggart Corporation.

Q. Where?—A. Deferiet, New York. Watertown, New York, is where the shipment was made.

Q. As a result of receiving this invoice from T. Bruno Paper Stock Company did you make payment?—A. Yes.

Q. Will you tell us the amount you actually paid.—A. $505.44.

Q. That is the amount shown on the invoice?—A. That is the amount of the invoice.

Q. $1.75 per hundredweight?—A. Yes, sir.

Mr. ROSSBACH. I offer this in evidence.

Mr. SOMMER. No objection.

(Received and marked "Exhibit G-5.")

Mr. ROSSBACH. And at the same time I ask that the invoice which

the witness identified as being his invoice to the Taggart Corporation be marked for identification.

(Marked "G-6" for Identification.)

Q. I show you a fourth invoice, Mr. Carrano, addressed to you, apparently from the T. Bruno Paper Stock Company, and ask whether you can further identify that?—A. Yes, sir.

Q. Tell us what it represents.—A. This invoice is from Bruno to us for carload #1 Assorted Kraft @ $1.75, total amount $603.36.

Q. And as a result of receiving that invoice, did you make payment?—A. Yes, sir.

Q. How much?—A. $603.36.

13 Q. The amount shown on it?—A. Yes, sir.

Mr. Rossbach. I offer it in evidence.

Mr. Sommer. No objection.

The Court. Mark it.

(Received and marked "Exhibit G-7.")

Q. And I show you a fifth invoice, Mr. Carrano, purporting to be a photostatic copy of an invoice addressed to you by T. Bruno Paper Stock Company, ask you whether you can further identify that?—A. Yes, sir.

Q. As being what?—A. As being invoice from Bruno to us for a carload of #1 Assorted Kraft.

Q. Amount?—A. $812.07.

Q. As a result of receiving that did you make payment?—A. Yes, sir.

Q. In what amount?—A. $812.07.

Q. And to whom was that consigned?—A. That was consigned to Taggart Corporation.

Q. Your answer is the same referring to that exhibit.—A. Yes.

Q. And this is your invoice to the Taggart Corporation?—A. Yes.

Mr. Rossbach. I offer this Bruno invoice in evidence.

Mr. Sommer. No objection.

(Received and marked "Exhibit G-8.")

Mr. Rossbach. And I ask that the Carrano invoice identified by the witness be marked for identification.

The Court. So marked.

(Marked "G-9" for Identification.)

14 Q. Now, Mr. Carrano, will you tell us, please, based upon your experience in the waste-paper business, what the difference is between assorted Kraft and corrugated waste paper, and with particular reference to the categories in which they fall under the Office of Price Administration regulations, if you know.—A. Well, the old corrugated papers such as used for containers, boxes, is called the old corrugated containers. It has a ceiling price of $23 per ton. The grade known as No. 1 Assorted

Kraft is any kind of kraft paper such as used in wrapping, wrapping papers, envelopes and bags—that class of paper.

Q. All right. Now, in your negotiation for the purchase of these particular grades of waste paper as indicated by these exhibits, with whom did you deal, as far as the Bruno Paper Stock Company was concerned?—A. The individual?

Q. Yes.—A. With Louis Bruno.

Q. That is, the defendant in this particular case?—A. Yes, sir.

Q. And you accepted the invoices directed to you by them or by him, did you, at their face value, and paid based upon it, did you not?—A. Yes, sir.

Q. At any time did you involve yourself in an inspection of the contents of any shipment?—A. No, sir.

Mr. ROSSBACH. Nothing further.

Cross-examination by Mr. SOMMER:

Q. Mr. Carrano, let's first get this question of the kraft straightened out. These corrugated boxes that you talk of are made from kraft, are they not?—A. Some of them are; yes, sir.

Q. And there are two pieces of kraft between which is placed a piece of corrugated kraft?—A. That's right.

Q. Did you give orders to Bruno for paper?—A. Yes, sir.

15 Q. And what were the terms of those orders?—A. I don't quite get you; what do you mean?

Q. Well, when you ordered paper from Bruno you ordered it upon certain terms, did you not?—A. Yes. We specify the grade we use, the price we are willing to pay and where he is to ship it and then we have other terms in connection with the purchase of waste paper.

Q. Now, in addition to specifications of the type of material, you also had a condition in the order that the order was subject to inspection at the mill as to class, quantity, and quality of merchandise?

Mr. ROSSBACH. I object.

Q. (Continuing). Was it not?

Mr. ROSSBACH. Unless the order itself is to be introduced in evidence—there has been the suggestion that there is a purchase order.

The COURT. How did you get these particular shipments?

The WITNESS. Well, we would, ordinarily, the way we transact——

The COURT. No; these, these.

The WITNESS. We would talk on the phone and make a purchase of a carload of paper and we would send an order out for the carload and instruct them where to ship it.

The COURT. How did you do that, in writing; send it out in writing?

The WITNESS. We usually confirmed it in writing; yes.

The COURT. Well, did you confirm these orders in writing?

The WITNESS. Yes, sir.

16 Q. And have you a copy of the orders that you sent out?—A. I have.

Q. Will you let us see those orders?—A. Want them all?

Q. Well, all pertaining to these; these are the orders that you gave to Bruno covering the shipments we are discussing here. Now, is that correct?—A. Those are duplicate orders.

Q. Duplicates of the orders.

Mr. SOMMER. I ask that these be marked for identification.

The COURT. Mark them for identification.

(Marked "D-1" for Identification.)

Q. Now, all of these orders, Mr. Carrano, are on a printed form; is that correct?—A. Yes, sir.

Q. And they all contain the same condition, do they not?—A. Yes, sir.

Q. That "The above merchandise is purchased subject to mill or consignee's report as to weight, quality, excess freight, etc."—A. Yes, sir.

Q. Now, did you receive orders from the mill for paper?—A. Yes, sir.

Q. And have you with you the orders that you received from the mill that cover the paper here involved?—A. I have with me just one order from one of the mills.

Q. Will you produce that order, sir?

(Paper is produced by the witness.)

Mr. SOMMER. I ask that this be marked for identification.

The COURT. Mark it for identification.

(Marked "D-2" for Identification.)

17 Q. The order which you received from the Taggart Corporation was on a printed form as well; is that correct?—A. Yes, sir.

Q. And contained the conditions of the order printed thereon?—A. Yes, sir.

Q. And your order from Taggart was upon the following conditions, was it not: "All materials will be subject to our inspection and approval, and if rejected, same will be held subject to your order and risk and at your expense," is that correct?—A. Yes, sir.

Q. And insofar as your dealings with the Ohio corporation, what were the terms upon which you dealt with them?—A. Well, their terms are practically the same, sold under their inspection and approval as to weight and quality and so forth.

Q. Now, is that the custom of the trade?—A. Yes, sir.

Q. And in shipping to a mill does it make any difference under what name the goods is invoiced?—A. Well, it doesn't make an

awful lot of difference, because they are all subject to final reports. The only difference there would be the amount of money that we have to lay out.

Q. Now, when the goods arrives at the mill is it inspected there?

Mr. ROSSBACH. I object to that unless this man is at the mill.

Q. Do you receive a report from the mill as to the inspection of the paper after it is received at the mill?—A. Yes, sir.

The COURT. Did you on these particular cases?

The WITNESS. I believe so, sir.

Q. And after you have received the report from the mill as to what was contained in the cars, what do you then do insofar as the dealer from whom you purchase the paper is concerned?—A. Well, we usually call him up first and tell him what the report contains and then be governed by what he says, whether he wants to leave the merchandise at the mill or whether he wants to take it away and ship it somewhere else.

Q. Now, in connection with this transaction did you receive reports from the mill?—A. I believe we did; yes.

Q. And after that was a debit memo sent to T. Bruno Paper Company?—A. I think so.

Q. I show you three debit memos and ask you to examine them and see whether they cover the paper that is covered by the invoices which have been offered in evidence?—A. Yes; they cover the cars in question.

Q. And are these debit memos issued by your company to the T. Bruno Stock Company?—A. Yes, sir.

Mr. SOMMER. I ask that these be marked for identification.

The COURT. They may be marked for identification.

(Marked "Exhibit D-3" for Identification.)

Q. Now, as a matter of fact, Mr. Carrano, as the result of the agreement that existed between you, T. Bruno Paper Stock Company, and the mills, when was the price that was to be paid for the paper to be finally determined?

Mr. ROSSBACH. I object to that on the ground that it does not make any difference because the price as testified to by the witness was paid upon the submission to him of an invoice by his immediate seller.

The COURT. What price do you mean, Mr. Sommer?

Mr. SOMMER. A final price to be paid for the paper.

The COURT. By this man?

Mr. SOMMER. Yes; by this man.

The COURT. He has testified that he paid it upon receipt of the invoice, was it?

The WITNESS. Yes, sir.

Mr. SOMMER. That is correct, but that wasn't the final price. He has testified that it was subject——

The COURT. Was there any other price?

The WITNESS. In waste paper it is all sold subject to the mill report. It usually takes four or five weeks. There is usually an adjustment.

The COURT. Was any adjustment made in these particular matters?

The WITNESS. Yes; he just showed me some debits that were issued on those shipments.

Q. Under your agreement, when was the final price he actually paid for this paper to be determined?—A. Well, we had no agreement to that effect, those terms—that is regular trade terms that we have and regular trade custom terms.

The COURT. As I understand it when you got the invoice you paid the amount set forth in the invoice?

The WITNESS. Yes, sir.

The COURT. Now, then, when the goods were shipped to the final consignee you received a report?

The WITNESS. Yes, sir.

The COURT. And upon receipt of that report you made certain credit adjustments?

The WITNESS. Yes, sir.

The COURT. Now, when were the credit adjustments made, on the dates set forth on those credit slips?

20 The WITNESS. Well, those are the dates that we charged back our customer. Now, the notice that we had from the consignee may be different, but the dates we charge him back, issue our debits to him are as shown on those reports.

Q. Now, as the result of this trade practice and as the result of the agreements that existed between you and Bruno, did you pay Bruno anything above the set ceiling price for this paper?—A. Well, when the final transaction was completed he didn't receive anything over the ceiling price.

Q. Now, in referring to the ceiling price as I understand it, it varies for the different types of paper; is that correct?—A. Yes, sir.

Q. And that ceiling price on corrugated kraft is $1.15 plus five cents for handling?—A. Yes, sir.

Q. Per hundredweight; so that the total price is $1.20?—A. Yes, sir.

Q. And the other papers vary in the same manner, is that correct?—A. Yes.

Redirect examination by Mr. ROSSBACH:

Q. Mr. Carrano, do you have with you the reports that you got from the mill in connection with these particular shipments?—A. Yes, I have.

Q. Do you have Taggart's?—A. No; Taggart's don't issue reports; they usually reported it later and asked us to send them a credit or a corrected invoice.

Q. Do you have any letters that you received from Taggart in connection with the three shipments that they got?—A. I didn't bring those with me.

Q. Do you have any recollection of having received them?—A. Yes; we did.

21 Q. With particular reference to the three shipments which are represented by the invoices that have already gone in evidence, is that right?—A. Yes, sir.

Q. And these two reports here are from the Ohio Box Board Company pertaining to the other two shipments represented by the other two invoices, are they not?—A. Yes, sir.

Q. And as a result of that you issued these debits to Bruno?—A. Yes, sir.

Q. Can you tell us whether the dates as stated on these debit memos represent the date upon which those memos were issued?—A. The date of these memos is the date that we made them up at our office.

Q. And then mailed them?—A. Well, we don't mail them, we usually forward them with the next check, so that he may have received those a week afterwards.

Q. So that August the 10th, 1944 for the one, April 13th, 1944 for the other and April the 13th, 1944 for the third, represent the date upon which they were made up at your office?—A. That's right, that is when the transaction is completed.

Q. Now, Mr. Carrano, here is an invoice from T. Bruno Paper Stock Company to you dated January the 13th, 1944. Tell us what that represents.—A. That is a carload of waste paper from T. Bruno to us #1 Assorted Kraft.

Q. And does that represent a transaction as a result of which you bought waste paper from Bruno?—A. Yes.

Q. And did you pay the price as stated thereon?—A. Yes, sir.

Q. And to whom was that consigned?

Mr. Sommer. Well, now, I object as being wholly immaterial, not being one of the shipments mentioned in this indictment.

22 The Court. What is the purpose, Mr. Rossbach?

Mr. Rossbach. If your Honor please, the primary purpose is to neutralize whatever effect the witnesses testimony was on cross examination to the extent of showing that it was not the practice as he described it, for these debit memos to be issued prior to the dates alleged in the information; that it was not the trade practice, nor did the dealer regard the inspection at the mill as a condition precedent to the sale.

The COURT. Well, as I understand, the basis of this charge is that this man sold at over-ceiling prices.

Mr. ROSSBACH. That's right.

The COURT. I don't care what the trade practice is. What we are trying to get at is whether or not he did sell at over-ceiling prices. I don't see how this is material.

Mr. ROSSBACH. Except insofar as it would apply to the cross-examination, plus the indicated effort on the part of Mr. Sommer to show this was nothing wilful, nothing intentional and to offer some transactions within this period will——

The COURT. Let us see if we can get at this. Just think now of what you are saying. You received an invoice from the defendant Bruno.

Mr. SOMMER. Received it from T. Bruno Paper Company.

The COURT. For some paper which you bought and which was shipped to how many different mills?

Mr. SOMMER. Two different mills.

The COURT. Two different mills. How many shipments?

Mr. SOMMER. Five.

23 The COURT. All of these shipments consisted of paper which you bought from Bruno and which were shipped to these two mills. You received invoices, that's right?

The WITNESS. Yes, sir.

The COURT. You paid the amount indicated on the invoice?

The WITNESS. Yes, sir.

The COURT. Then you received from the mills on arrival of the goods that you shipped, reports?

The WITNESS. Yes, sir.

The COURT. As to the weight and quality of the material received?

The WITNESS. Yes, sir.

The COURT. Right. Upon receipt of those, you sent credit slips to Bruno?

The WITNESS. Yes, sir.

The COURT. For differences in the merchandise received as a variation from the merchandise included in the invoice?

The WITNESS. Yes, sir.

The COURT. Was that whole transaction, so far as the payment and the shipment, the report and the giving of credit slip, carried out as that ordinarily would be carried out in the regular course of the trade?

The WITNESS. Yes, sir.

Mr. ROSSBACH. May I supplement that by one additional question?

The COURT. Yes.

By Mr. ROSSBACH:

Q. When you say that, Mr. Carrano, do you mean that previous to that, on shipments made by Bruno on your order or on your consignment to, we will say Taggart Corporation, they had been in the habit of sending the reports back by letter?—A. Yes; we have had reports.

Q. And those reports would contain the information to you that instead of assorted kraft, the shipment contained corrugated?—A. Sometimes; yes.

Q. And that as a result of that, you would issue these debits memos to Bruno?—A. That's right; to Bruno or whoever shipped the car for us.

Mr. ROSSBACH. If your Honor please, I don't want to say anything that is going to make a difference because of your Honor's subsequent ruling. I would ask that I be permitted to argue this out of the hearing of the jury.

The COURT. All right. The jury will be excused.

(The jury was excused.)

Mr. ROSSBACH. If the Court please, the information alleges five independent transactions. These debit memos which have been identified by this witness occurred all at times subsequent to any dates alleged in the information. We are prepared to show by other witnesses that when these shipments, or some of them, reached their point of destination they were inspected at the point of destination by an Office of Price Administration agent. It was then for the first time that any of these people who are involved in this transaction became aware of the interest of the Office of Price Administration in these various shipments. They now say that this was a static practice which was engaged in throughout; we are prepared to show by similar transactions within a space of two or two and a half months immediately prior to this, there were inspections made without the benefit of the Office of Price Administration agents. There was the same situation disclosed, corrugated, instead of assorted kraft at the mills, and yet in no instance was there ever a report issued by the mill or a debit memo issued by this witness to bring——

The COURT. Well, is it the contention that this man is lying on the stand? Because if it is and you can prove it, it will be a sorry day for somebody and that is why I have asked the question that I asked.

Mr. ROSSBACH. I think that in fairness to him, we should be permitted to——

The COURT. I am not going to permit you to contradict him because he is your witness. As far as I will permit you to go is to neutralize his testimony, which means that in effect he has not

testified at all and you are left without his testimony and you go into the case and prove it with the other witnesses that you have, but not with him, if you are going to neutralize his testimony.

Mr. ROSSBACH. No, sir; we cannot do that.

The COURT. Well, you cannot contradict it.

Mr. ROSSBACH. It is not that kind of a case, but we do say that we are permitted under the rules, to have him identify similar transactions between these same parties involving the same subject matter where the same pattern of activity was followed throughout.

The COURT. Can't you show that through somebody else?

Mr. ROSSBACH. No, sir; because he is the person who dealt with the defendant.

The COURT. Well, I don't think I will allow you to do it, Mr. Rossbach, because, in effect, you are trying to impugn your
26 own witness. He has testified flatly that that was the fact of the trade and was followed in this case. Now if you are going to show something else, you are trying to contradict your own witness through your examination.

Mr. ROSSBACH. All right, sir, I will wit'draw the offer at this time.

The COURT. But I am saying this to you, that if you are convinced that the witness is not telling the truth as he testified here, action may be taken.

Mr. ROSSBACH. May I take that up with your Honor later?

The COURT. Yes. All right, you may recall the jury.

(Proceedings resumed in the presence of the jury.)

Mr. ROSSBACH. At this time, if the Court please, I would like to offer in evidence the debit memo referred to by Mr. Sommer and identified by the witness.

The COURT. All right.

Mr. SOMMER. I have no objection to Mr. Rossbach offering in evidence everything I have had marked for identification.

Mr. ROSSBACH. Mark this in evidence.

(Received and marked "Exhibit G–10.")

Mr. ROSSBACH. Nothing further from this witness, if the Court please.

Re-cross-examination by Mr. SOMMER:

Q. Just one question, Mr. Carrano. When you sent these debit memos that were sent with the check covering the balance due up to that time, were they not for other transactions?—A. Yes, sir.

27 Q. And the amount was deducted from the checks that that you sent?—A. Yes, sir.

Q. To Bruno Paper Company?—A. That's right.

Q. That's all.

The COURT. In the orderly course of business, how long a time ordinarily elapsed between the receipt of the merchandise by the ultimate consignee and the establishment of the debit memo?

The WITNESS. Well, I would say in ordinary times it would take from two to three weeks to get in a report; but with conditions as they are today, it may take two or three weeks before the car gets out to the destination.

The COURT. I say, after the receipt of the shipment by the ultimate consignee.

The WITNESS. You are talking about the mill now?

The COURT. Yes.

The WITNESS. The mill might take from four to five weeks or from two to three weeks, depending on when he receives the car and unloads the car and the office staff is ready to send in a report. So I would say that would all take place between two and six weeks.

The COURT. After the receipt by the mill?

The WITNESS. Yes, sir.

The COURT. All right, step down. Next witness.

CHARLES M. FORMAN, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Forman, you are employed by the Ohio Box Board Company of Rittman, Ohio?—A. Yes, sir.

28 Q. In what capacity?—A. Secretary and treasurer.

Q. Do you have charge and control of the records of the company as they relate to shipments received by it?—A. Yes.

Q. Will you refer please, to the records and tell us whether you received a shipment from James Carrano's Sons on car number CBQ 22160?—A. Yes, sir.

Q. On what date?—A. It was invoiced on March 31st.

Q. And do your records show upon what date payment was made based upon that invoice?—A. Payment was made on April 24, 1944.

Q. Is there a record contained in your official file which shows that the contents of the car was inspected?—A. Yes, sir.

Q. Do you know who made the inspection?—A. Our unloading superintendent.

Q. And who would that be?—A. Mr. Taylor.

Q. And do you have the report that was given in by him?—A. Yes, sir.

Q. Will you tell us what that report contained?

The COURT. What date?

The WITNESS. The date is April 8th when it was unloaded.

Q. And what was the date of payment?—A. April 24th.

Q. Now, as the result of that inspection or the report of inspection, what did you find as to the contents of that particular car? A. 2,605 pounds of mixed paper; 25,979 pounds of corrugated, and 6,735 pounds of kraft.

The COURT. Of what?

The WITNESS. Of kraft; assorted kraft.

Q. Now, was there any kraft contained in that carload other than the 6,735?—A. No.

29 Q. Now, as a result of that inspection and based upon the report of it, what, if anything, did you or your company do with respect to payment?—A. We paid for what the car received according to our inspection.

Q. You made a report of that inspection to Mr. Carrano, did you not?—A. Yes, sir.

Q. Will you tell me whether you ever had a shipment from Carrano on Pennsylvania car number 92203?—A. Yes, sir.

Q. And was the contents of that car inspected?—A. Yes, sir.

Q. By Mr. Taylor?—A. That's right.

Q. And what was it found to contain?—A. It contained 24,040 pounds of corrugated and 485 pounds of kraft.

Q. And the 485 represents the extent of the kraft in that particular shipment?—A. Yes, sir.

Q. Were you present at any time while the——

The COURT. Did you pay for that?

The WITNESS. Sir?

The COURT. Was that paid for by your company?

The WITNESS. It was paid on the basis that we took it in.

The COURT. On the basis of what you received or on the invoice?

The WITNESS. No; on the basis of what we actually received.

Q. Can you tell us who was present at the time Mr. Taylor made the inspection of the contents?—A. You mean the first inspection, or when he unloaded it?

Q. Whenever he inspected the contents of the car, who was present?—A. There was one inspection made prior to unloading the car, and it was Mr. Taylor, Mr. Kay, our purchasing agent, myself and two Office of Price Administration officials.

30 Q. Then there was subsequent inspection made?—A. It was inspected when unloaded.

Q. And as to the second car what situation took place?—A. Identical.

Q. And the two Office of Price Administration men were there at that time, too?—A. Yes, sir.

Q. That is all.

Cross-examination by Mr. SOMMER:

Q. Mr. Forman, when was the second car inspected?—A. The second car was unloaded on April 8, 1944, and inspected at that time.

Q. And paid for when?—A. April 24, 1944.

Q. Now, the corrugated was at one price, was it not—insofar as the first carload, you found three different kinds of paper in the carload, didn't you?—A. Yes, sir.

Q. And each one of them was at a different price, was it not?—A. That's right.

Q. And paid for by your company at the ceiling prices, according to the class?—A. Yes, sir.

The COURT. That did not correspond to the invoice?

The WITNESS. No, sir.

Q. And insofar as the second carload was concerned, it was found to be two classes of paper; is that correct?—A. That is correct.

Q. One of them was a paper at $2.75 a hundredweight?—A. $1.75.

Q. $1.75 a hundredweight, and the other was at $1.15?—A. That is correct.

Q. And you paid for that paper to Carrano at ceiling price, did you not?—A. Yes, sir.

31 Q. And in connection with your orders for paper, are all shipments that you buy subject to mill inspection?—A. Yes, sir.

Q. And you pay according to what you find in the load and not according to invoice; is that correct?—A. That is correct.

Q. That is all.

Redirect examination by Mr. ROSSBACH:

Q. Mr. Forman, with respect to the 2.005 pounds of mixed paper, tell us what the ceiling price on that was?—A. We paid $14. I assume that was the ceiling price at that time.

Q. That would be about 70¢ a pound?—A. 70¢ per hundred.

Q. Per hundredweight I mean.

The COURT. Have you had much experience in the examination of these cars?

The WITNESS. I don't ordinarily, your Honor, examine the cars. I do know waste paper.

The COURT. Well, have you had charge of the waste paper receipt at your place?

The WITNESS. No, sir.

The COURT. And their payment?

The WITNESS. No, sir. I am on the purchasing end of the paper, not the inspection, but I do know waste paper from years of experience.

32 VIRGIL B. TAYLOR, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Taylor, you are employed by the Ohio Box Board Company of Rittman, Ohio?—A. Yes, sir.

Q. What is your official capacity out there?—A. Unloading department supervisor.

Q. And within the scope of your authority do you inspect the contents of cars delivered there?—A. That's right.

Q. And with particular reference to—well, to shortcut it, with particular reference to the two cars just described by Mr. Forman, were you present at the time their contents were examined?—A. Yes, sir.

Q. Did you personally inspect the contents?—A. Yes, sir.

Q. Did you find them to be as he enumerated them?—A. Yes, sir.

The COURT. Were you the regular inspector there?

The WITNESS. Yes, sir.

Q. At any rate, were you familiar with the fact that they were also described upon an invoice?—A. That we do not get.

Q. You don't have anything to do with that?—A. We unload the paper and report it to the accounting office, what we find in the shipment.

Q. Without the benefit of a comparison with the invoice?—A. Without the knowledge of what——

Q. So you come in cold——A. That's right.

Q. And simply report what you see?—A. That's right.

33 Q. And did either of these cars contain any assorted kraft waste paper to the extent of more than 6,735 pounds, as stated by Mr. Forman?—A. He took the information that I returned to the office. I have nothing with me here. He has the report that I made of that car and whatever shows on that unloading which was actually in the car.

Q. Now, take the other car, the second car; did that contain any assorted kraft, to the best of your recollection?—A. To my recollection, I cannot tell.

Q. Nothing further.

Cross-examination by Mr. SOMMER:

Q. Mr. Taylor, you inspect for quality of paper that comes into the mill, don't you? I don't mean you personally, but it is inspected by that department, isn't it?—A. The inspecting—we don't make inspections on every car in the way of inspection. Every car is unloaded and graded as unloaded.

Q. But you inspect the paper as you take it off the car?—A. That's right.

Q. And you grade it?—A. That's right.

Q. And then you report to the office what was in the car?—A. That's right.

Q. And to grade it, you have to undo the bales, don't you?—A. No.

Q. Not entirely; you just grade it by a look on the outside of the bale, is that it?—A. That's right.

Q. And then you report what the bales appear to you to be to the office?—A. That's right.

Q. That's all.

34 CYRUS E. TICE, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Mr. ROSSBACH. If your Honor please, the two previous witnesses are from Rittman, Ohio, and unless Mr. Sommer has some reason or the Court has some reason to believe that they should stay, I should like to have them excused at this time.

Mr. SOMMER. I have no reason.

The COURT. All right.

Q. Mr. Tice, you are associated with the Taggart Corporation?—A. Yes.

Q. And where are you stationed?—A. At 230 Park Avenue, New York, in the New York office.

Q. And what is the official position you hold with the corporation?—A. Accountant.

Q. And in that capacity are you familiar with the books and records as they pertain to shipments or purchases of waste paper made by the corporation?—A. Yes.

Q. And with particular reference to those shipments or purchases made from the defendant Bruno?—A. Yes.

Q. Tell me——

Mr. SOMMER. I am going to object to that question and ask that the answer be stricken out, because the testimony here was that there was no paper bought from Bruno by the Taggart Corporation.

Mr. ROSSBACH. I am sorry. I withdraw that. Technically there was paper bought from Bruno though not from his client.

Mr. SOMMER. That is correct.

35 Mr. ROSSBACH. I shouldn't have said that; I mean I know better.

Q. Will you refer please to on or about March the 1st, 1944 and tell us whether your company took a shipment of waste paper from James Carrano's Sons on railroad car SP 96472?—A. Yes.

Q. What did that shipment consist of?—A. Invoice, No. 1 Assorted Kraft.

Q. And what amount was shown on the invoice as sent to you by Carrano's?—A. $635.62.

Q. Break that down; what did that represent?—A. At $35 a ton plus jobber's allowance of 5½ per cent, and loading charges of a dollar a ton.

Q. Stripped of all the extra charges, what was the base charge made for the waste paper itself?—A. $586.60.

The Court. How much is that per ton?

The Witness. $35 a ton.

Q. And how was the waste paper described on that invoice?—A. No. 1.

Q. In grade?—A. No. 1 Assorted Kraft.

Q. And when did your company make payment for that particular shipment?—A. March 20, 1944.

Q. And was that after you had received a report of inspection of it?—A. Yes.

Q. I will show you what appears to be a freight record and ask you whether you recognize that as being a part of the system of accountancy as conducted in your corporation?—A. Yes; that is.

Q. Now, when did you receive that report?—A. Well, that report is dated March 7, 1944.

Q. And shows the inspection of the contents of this particular car?—A. Yes.

36 Q. And the results of the inspection are shown upon it?—A. Yes; corrugated.

Q. Now, when did you actually receive notice of the inspection?—A. Well, that is hard to say.

Q. Well, now, as a matter of fact, Mr. Tice, in the conduct of your organization—your business, as I understand it, your main office is located in New York?—A. Yes.

Q. The Watertown office is a mill office?—A. It is a mill office.

Q. So that the accountant's records are kept in New York generally?—A. Yes.

Q. When a shipment is made to the Watertown office it is reported back to you for payment?—A. Yes.

Q. Based upon the invoice presented by the seller?—A. Yes.

Q. Is that right?—A. That's right.

Q. So that you then rely upon the report from Watertown as to whether you should pay the invoice or not?—A. Yes.

The COURT. Do they send you a report of what they actually find to be in the shipment?

The WITNESS. No, not usually; they merely approve the invoice on the basis of the report.

The COURT. Well, suppose the invoice is not approved, do you get a copy of the reason for the failure to approve?

The WITNESS. Well, we would in some cases. Usually, if the invoice is not approved it is not sent to the New York office until whatever discrepancy there is is cleared up.

Q. For instance, Mr. Tice, in the ordinary course of activity in the waste paper shipping business, there is a certain amount of water that gets into paper, is there not?—A. Yes.

37 Q. And until the Watertown office irons out that water difficulty with the shipper, you wouldn't get an O. K. to pay the bill?—A. No.

Q. And if you did and if there were a 10-percent water debit in connection with the paper, your office would be notified of it?—A. Yes.

Q. And so too, that would prevail where there was a misgrading of the paper?—A. Yes.

Q. Or a difference in the grade as actually seen, and as represented on the invoice?—A. Yes.

Q. So that, pursuant to the invoice submitted in this particular case, your company then made payment, did it not?—A. Yes.

Q. And I am referring now to a photostatic copy of the reverse side of the invoice and ask you whether you can identify that?—A. Yes.

Q. And what does that represent?—A. That represents the accounting information and the approval by the purchasing and office manager at Watertown.

Q. Right. In other words, that is the stamp of approval put on at Watertown, sent to you, upon which you base payment?—A. That's right.

Q. And in this particular case, the payment as shown on the reverse side here was $635.62?—A. That's right.

Q. And that represents the same price that was stated on the invoice?—A. That is the same price on the invoice.

Mr. ROSSBACH. I ask that the first paper the witness identified as the freight record be marked in evidence.

Mr. SOMMER. No objection.

(Received and marked "Exhibit G-1".)

Mr. ROSSBACH. And the photostatic copy of the back of the invoice, which has previously been marked in evidence.

38 Mr. SOMMER. May I see the front of the invoice? No objection.

Mr. ROSSBACH. Well, if your Honor will permit me I would like to clip the front and back together and offer them all as one exhibit.

The COURT. All right.

Mr. ROSSBACH. Do you want to take a look at the front of it again?

Mr. SOMMER. This cannot be the one because I thought you marked in evidence the invoice from Carrano.

Mr. ROSSBACH. The invoice from Carrano was marked for identification only and the invoice from Bruno we marked in evidence.

Mr. SOMMER. Well, this one isn't marked for identification or anything.

The COURT. It is offered now in evidence. Do you object to it?

Mr. SOMMER. I understood they were marked for identification; this one isn't marked for identification.

The COURT. No; it is marked in evidence, and as one exhibit, indicating the front and back of the paper described by the witness.

Mr. SOMMER. Well, I will object to it, because it is not identified as anything that has to do with Bruno and it isn't one of the papers identified by Carrano.

Q. I refer you to the front of the invoice, Mr. Tice, and ask you if you can further identify that?—A. Yes.

Q. As being what?—A. Photostatic copy of the original invoice.

The COURT. From whom to whom?

39 The WITNESS. From Carrano to the Taggart Corporation.

Q. Now, does that represent the invoice from Carrano to you which can be identified with any of these previous invoices?

The COURT. Carrano has testified that the material that he bought from Bruno was forwarded to the Taggart Corporation at Deferiet, New York. There is in evidence an invoice from Bruno to Carrano. The one that is now sought to be offered in evidence is from Carrano to Taggart and contains the same freight car number and the same description and the same number of pounds. Any objection?

Mr. SOMMER. Not if it covers the same freight car.

The COURT. The same freight car number is on it. Just show him, SP—whatever it is, Southern Pacific. How about the back, Mr. Sommer? Any objection to that?

Mr. SOMMER. No; no objection.

The COURT. All right, let it go in; mark it as one exhibit.

(Received and marked "Exhibit G–12.")

Q. Now, I show you the front and back, photostatic copies of the front and back of another invoice with the freight record.

Will you tell us whether that relates to a shipment previously identified by an invoice?—A. Yes.

Q. I am directing your attention to what has been marked in evidence as "Exhibit G-5."—A. They all look as if they——

Q. Now, refer to the other record; will you tell us whether that represents examination of the contents of that particular shipment?—A. Yes.

40 Q. And specifically referring to the photostatic copy of the back of the certificate, it appears that the amount of $532.47 is reported to you for payment?—A. Yes.

Is that right? Which is the exact amount shown on the invoice based upon an enumeration of assorted kraft?—A. Yes.

Q. Now, will you tell us, please, whether your company actually paid the amount reported for payment?—A. Yes; on February 29.

Q. February 29?—A. Yes.

Mr. Rossbach. I now offer in evidence—it has already been marked for identification as "Exhibit G-6"—with the photostatic copy of the back of it as identified by this witness.

Mr. Sommer. No objection.

(Received and marked "Exhibit G-6.")

Mr. Rossbach. And also the freight record as identified by this witness.

Mr. Sommer. No objection.

(Received and marked "Exhibit G-13.")

Q. And now I show you what has been marked as "Exhibit G-8" in evidence and direct your attention to what has been marked as "G-9" for Identification, and also a photostatic copy of the reverse side of an invoice plus the freight record, and ask you whether they have any association?—A. Yes; they are all related.

Q. They are all related. And, as stated on the reverse side of the invoice, this purports to have been returned to you for payment in the sum of $855.49, which is exactly the amount stated on the invoice based upon shipment of assorted kraft?—A. Right.

Q. And was that amount actually paid by your company?—A. Yes; that amount was paid.

41 Mr. Rossbach. I offer this in evidence, G-9, with the reverse side of it.

Mr. Sommer. No objection.

Mr. Rossbach. And the freight bill.

(Received and marked "Exhibit G-9" with reverse side attached.)

(Freight bill is received and marked "Exhibit G-14.")

Q. Now, Mr. Tice, was anything called to your attention in connection with these shipments which reacted to the payment as you have stated?—A. The payment on invoice 9644 was made, but the check was canceled and it was repaid at a lower value.

Q. And what was the date of repayment?

The COURT. What do you mean the check was canceled?

The WITNESS. Stopped payment on the check.

Q. And on what date did you stop payment?—A. April 6.

Q. And what is the date of the check?—A. April 4.

Q. Now, did you have a reason for stopping payment?—A. Yes; on the basis of a report.

Q. From whom?—A. From our mill. The invoice which is for assorted kraft, it was found that it was not assorted kraft, it was a lower grade of paper.

Q. What grade?—A. Well, corrugated, on which the ceiling price is $23 a ton, and we then made payment on this invoice on that basis.

Q. All right; and the invoice was corrected?—Well, we corrected the invoice ourselves.

The COURT. You paid on the basis of your report?

The WITNESS. Yes.

42 Q. Now, had you previously received any reports from the mill with respect to the inspection of any shipments received by the mill from Carrano?—A. No; we hadn't in the New York office.

Q. You have been doing business with Carrano for some time?—A. Yes.

Q. To the best of your knowledge, have you ever canceled out a transaction as involving assorted kraft because it was reported to you that it involved corrugated?

Mr. SOMMER. Objected to as wholly immaterial.

The COURT. What is the purpose?

Mr. ROSSBACH. The purpose is to show that the correction in this particular case was made for a very certain and definite occurrence which took place on that day.

The COURT. If you have evidence that it was so done you don't improve it by showing that something else wasn't done. I sustain the objection.

Q. Now, on what date was your corrected check sent out?—A. May 19.

Q. 1944?—A. 1944.

Q. Nothing further.

Cross-examination by Mr. SOMMER:

Q. I show you, Mr. Tice, Government Exhibits G–11, 13, and 14 which you have identified as being the freight record covering these three shipments; is that correct?—A. Yes.

Q. Those freight records were made after inspection at the mill, were they not?—A. Yes.

Q. And all of them show the shipment to be corrugated paper,

do they not?—A. Well, of course this one just shows waste paper corrugated.

43 Q. And this one?—A. Corrugated.

Q. And this one?—A. Corrugated.

Q. So that at the mill there was an inspection and a report made that the paper was corrugated; is that right?—A. Yes.

Q. And payment was made, you say, to Carrano and then an adjustment made afterwards when the office picked up the error; is that correct?—A. Yes.

Q. No money was ever paid by your company to Bruno in connection with these transactions?—A. No.

Q. Now, all of your purchases were subject to mill inspection, were they not?—A. Yes.

Q. And if paper was different from invoice, then it was adjusted and the New York office notified you; is that correct?—A. Yes.

Q. That's all.

Redirect examination by Mr. ROSSBACH:

Q. And you would then notify Mr. Carrano, is that right?—A. That's right.

Q. But if you were not notified by the mill, there would be nothing for you to notify Mr. Carrano about, would there?—A. No.

Q. And the payment went through?—A. Yes.

Q. And you paid the full amount as shown on the invoice to Mr. Carrano?—A. Yes.

Q. With respect to three shipments, your attention has been called to, there was only one shipment where a debit was engaged in?—A. Yes.

Q. And the other two were paid in full?—A. Right.

Q. And no adjustment has ever been made on them?—A. No.

Q. Nothing further.

Mr. ROSSBACH. Mr. Duffy.

44 Mr. SOMMER. May I ask Mr. Tice one question?

The COURT. Yes; just come back a minute.

By Mr. SOMMER:

Q. If the inspection report had been called to the accounting office's attention, the checks would have been sent out according to what the inspection revealed, would they not?—A. Yes.

Mr. ROSSBACH. I object to that because——

The COURT. It follows from your question.

A. Yes.

Q. And it was not until some time after payment that the accounting office discovered that the inspection report and the invoice differed?—A. Yes.

Q. That's all.

The COURT. Was there an inspection of the other two cars; the other two shipments?

The WITNESS. Yes; every car has one, and that goes into the mill office at Watertown on which they base their records of inventory and approve the invoice to be sent to the New York office.

The COURT. How long after the check was paid was there a discovery of the error?

The WITNESS. May I see the freight record and the date on that?

Mr. ROSSBACH. You mean the back of it?

The WITNESS. I want the date. The invoice is dated March 21st. The car wasn't received and unloaded at the mill until March 27.

The COURT. Payment made on that according to invoice?

The WITNESS. Yes; payment was made on this—I am sorry, the date stamp is so faint I cannot see it in this light but it was, I think, April 1st.

45 The COURT. And when was the discovery of the report?

The WITNESS. The discovery of the report was made April 6th, the date we stopped payment on the check.

The COURT. Is that for all three shipments?

The WITNESS. No, your Honor, that is only one.

The COURT. Now, then, there were two other shipments. Was there ever any report received of variation between the invoice and the actual contents of the car?

The WITNESS. No; none.

By Mr. ROSSBACH:

Q. Mr. Tice, on April the 6th you stopped payment on the check?—A. Yes.

Q. Did you get information from Watertown from your office up there, that your Watertown mill had been visited by an Office of Price Administration agent?

Mr. SOMMER. I object to that as hearsay.

A. Prior to April 6th?

The COURT. If it is on the record of the company and he has it here he may testify to it. Is there any such record?

The WITNESS. I have not. There may be in the company.

Q. Nothing further.

Re-cross-examination by Mr. SOMMER:

Q. Just a moment. You say there was no report on the contents of the other two cars?—A. There was no report

46 to the New York office that the contents were not as invoiced.

Q. But the company had records which they didn't send to the New York office, showing an inspection of the cars and showing that they were corrugated?

Mr. ROSSBACH. I object to that, I think it is a matter of argument.

The COURT. Do you know it?

The WITNESS. No.

Q. These are records of your company?

The COURT. The records speak for themselves. Let the records speak.

Mr. ROSSBACH. I asked him that before and he testified that the records showed it was corrugated as a result of the inspection.

The COURT. No; he didn't say as a result of the inspection; he said the records showed it was corrugated. Now let's see. These purport to be freight records of the Taggart Corporation for three different shipments; are they?

The WITNESS. Yes, sir.

The COURT. And these are made by whom, Morrison and Murphy; right?

The WITNESS. Yes.

The COURT. Who are Morrison and Murphy?

The WITNESS. Yard foremen Mr. Morrison was, but he is now dead.

The COURT. Then that report to you showed the receipt of cars containing waste paper, two of them called corrugated, one waste paper; is that right?

The WITNESS. The other one is also marked corrugated down here.

The COURT. Marked corrugated below?

47 The WITNESS. Yes, sir.

The COURT. And these are the records forwarded to your office from the Watertown office?

The WITNESS. Yes.

FRANCIS C. DUFFY, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Duffy, you are connected with the Office of Price Administration?—A. Yes, sir.

Q. Stationed where?—A. At the Regional Office at Cleveland, Ohio.

Q. Did you have occasion to visit the premises of the Ohio Box Board Company at Rittman, Ohio?—A. I did.

Q. Will you tell us on what date you were there?—A. April 6th.

Q. What year?—A. 1944.

Q. What was the purpose of your visit; what did you do?—

A. To grade some cars of waste paper that had arrived at the Box Board mill there.

Q. Did you identify the cars by number?—A. Yes, sir.

Q. Do you have those numbers?—A. I do.

Q. What were the numbers of the cars?—A. There were three cars that were inspected that day, Pennsylvania Railroad 57253; Pennsylvania Railroad 92203; C. B. & Q. 22160.

Q. All right. Now, with specific reference to C. B. Q. 22160 and Pennsylvania 72153—Is that about right—What is the first one you mentioned?—A. Pennsylvania 57253.

Q. That one, and the 22160, what did you find those cars to contain?—A. Pennsylvania 57253 contained corrugated paper only.

48 Q. And how about the other one?

Mr. Sommer. Well now, I am going to object to that because that isn't one of the cars mentioned here. I don't know what car that is. It isn't one of those mentioned in the indictment.

Mr. Rossbach. The only things I am interested in are the ones mentioned in the indictment.

Mr. Sommer. Well, I assumed so.

Q. Pennsylvania 92203, have you got that one?—A. Yes, sir.

Q. And C. B. Q. 22160, I asked for those. What do those contain?—A. Pennsylvania 92203 contained very inferior grade of corrugated paper.

Q. Based upon your knowledge of the regulations of the Office of Price Administration and inspection of the paper, at what ceiling price was that paper permitted to be sold?—A. At $23.

Q. For what?—A. Per short ton.

Q. And as to the other car?—A. C. B. & Q. 22160 contained corrugated paper, contained one bale of kraft paper and some loose rolls of kraft paper.

Q. You are positive those did not contain a solid content of kraft?—A. No, sir; it did not.

The Court. Now, let see what proportion was there of kraft?

The Witness. I wouldn't know the weight of the bale of kraft paper, your Honor, but we estimated that the roll paper weighed about—our estimate went to all the kraft paper in the car, and we estimated that the car contained approximately two and a half tons of kraft paper, both bale and loose in the roll.

49 The Court. And how much was there altogether in the car?

The Witness. I don't have the invoices; I don't know the exact amount of the poundage that was invoiced in the car.

The Court. Well, what I am trying to get at is what proportion of the contents of that car was of the type of paper for which the ceiling was $35 a ton—corrugated kraft, was it?

Mr. ROSSBACH. No; assorted kraft.

The WITNESS. I don't know the weight of the total car, I mean I don't know how many pounds were invoiced in that car. I merely graded it as to quality.

The COURT. Well, how much, one-third or one-fifth, or what—you don't know how much was in the car at all?

The WITNESS. Oh, I would say on the basis of the loading of the car——

The COURT. Do you have any record of the examination made?

Mr. ROSSBACH. That has been testified to.

Mr. SOMMER. It has been testified to that the exact amount was 2,005 pounds mixed paper; 25,990——

Mr. ROSSBACH. 979.

Mr. SOMMER. Or nine hundred some of corrugated paper, and 27,735 pounds of assorted kraft.

The Court. So that practically half, was it?

Mr. SOMMER. No; twenty-five thousand as against eight thousand.

The COURT. Give me those figures again. It was invoiced as——

Mr. ROSSBACH. Assorted kraft.

The COURT. How much assorted kraft was there?

Mr. ROSSBACH. It was invoiced as 35,310 pounds, I believe, assorted kraft and then it was found——

The COURT. Actually what was it?

Mr. SOMMER. It was found to contain 2,005 pounds of mixed paper, 259——

The COURT. Wait a minute. Mixed paper, how much?

Mr. SOMMER. 2,005; twenty-five, nine hundred and some odd——

Mr. ROSSBACH. 79.

The COURT. Let me have it. What is it? How much assorted kraft?

Mr. SOMMER. 6,735.

The COURT. 6,735 pounds, and the balance was?

Mr. SOMMER. Corrugated.

The COURT. How much?

Mr. SOMMER. Twenty-five thousand, nine hundred odd pounds, and the other car was testified to.

The COURT. All right. Now, let me ask him. The corrugated paper had what ceiling?

The WITNESS. $23 per short ton.

The COURT. And the assorted kraft $35?

The Witness. $35

The COURT. Now, can you describe assorted kraft?

The WITNESS. Yes. Assorted kraft is the ordinary wrapping

paper or ordinary bag that you get in the store, the bag that you get, the sugar bag.

The COURT. Is there any difficulty in distinguishing between corrugated paper and assorted kraft?

51 The WITNESS. Yes, sir. Under the terms of the regulation MPR 30, there is no corrugated paper in——

The COURT. Will you just listen to my question? Is there any difficulty in distinguishing between it if you look at it?

The WITNESS. No, sir; none at all.

The COURT. You can tell immediately that corrugated paper is corrugated paper?

The WITNESS. That's right.

The COURT. And that assorted kraft is of the type that you want.

The WITNESS. That's right.

By Mr. SOMMER:

Q. This corrugated paper was made from kraft, wasn't it?—A. No; you take corrugated, it can be made from most any type of paper.

The COURT. Well, whether it is made of kraft or anything else, the ceiling price is $23?

The WITNESS. That's right.

Q. Now, you said the other car contained no kraft.

Mr. ROSSBACH. No; the C. B. Q. he has testified to.

The WITNESS. The C. B. Q. contained some kraft.

Q. The Pennsylvania 92203, you say that didn't contain any kraft?—A. No; upon my investigation I checked it as containing corrugated.

Q. If I were to tell you that an inspection at the company showed that there was 485 pounds of kraft bag in the car, would you say that that is incorrect?—A. No, sir; it is quite possible.

52 The COURT. How many pounds altogether in that car?

Mr. SOMMER. Your Honor wants the exact figure, I can give it to you; 25,620 pounds.

Mr. ROSSBACH. Nothing further.

JOHN MARKEY, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Markey, you are connected with the Office of Price Administration?—A. I am, sir.

Q. Stationed in Newark?—A. Yes, sir.

Q. Did you have occasion to visit the offices of the T. Bruno Paper Stock Company?—A. I did.

Q. Tell us the date of your first visit there.—A. April 5, 1944.

Q. And as a result of that visit did you——

The COURT. Where is it?

The WITNESS. On McKinley Street, Hackensack, New Jersey.

Q. As a result of that visit did you have occasion to inspect the books of the company with relation to the shipments which have been already identified by the invoices?—A. Not on that day, sir.

Q. On some subsequent day did you do it?—A. Yes, sir.

Q. What, if anything, did you find?—A. We found with respect to car number C. B. Q. 22,160, that the ledger of Bruno showed the sale of 35,310 pounds of assorted kraft.

Q. Did it show to whom it was sold?—A. It was in the Carrano, James Carrano account.

53 Q. All right; and did it show the amount for which it had been sold?—A. In the ledger record it showed an amount of $476.69.

Q. And did you check that through to see how much was recorded as actually received?—A. We checked the invoice that had been given to Carrano for that particular shipment and the invoice to Carrano was for $635.59.

Q. I mean this. What I meant is not the actual amount received, I meant the amount invoiced. Now, with respect to—you mentioned C. B. Q. Is that the one you just got through talking about?—A. C. B. Q. 22,160.

Q. Now, with respect to Pennsylvania 92,203, what did you find?—A. We found that there had been billed to Carrano 25,620 pounds of assorted kraft and an invoice to Carrano was $461.16 and that the ledger record kept by the defendant for that particular shipment showed $345.87.

Q. And with respect to that shipment identified with B. & O. 385,622 what did you find?—A. We found that there had been invoiced to Carrano 28,080 pounds assorted kraft in the amount of $504.44, and that the ledger account for Carrano showed a debit of $379.08.

Q. What do you mean a debit?—A. A charge for that particular shipment to Carrano.

Q. And with respect to that shipment identified as Southern Pacific car 96,472 what did you find?—A. We found that there had been billed to Carrano 33,520 pounds assorted kraft, total price $603.36, and that the ledger record disclosed $452.52.

Q. And with respect to the shipment contained on K. C. So. 25,293 what did you find?—A. Found that there had been billed to Carrano 45,115 assorted kraft for $812.07 and that the ledger record disclosed $609.06.

Q. So that in each instance there was a ledger record showing a cash receipt of less than the amount actually invoiced or

54 billed; is that right?—A. It didn't show the receipt, it showed the debit to Carrano for that particular amount.

Q. Did you have a conversation with Bruno relating to the difference in those figures?—A. Yes, we did.

Q. And did you get an explanation as to what those debits represented?—A. Yes, we did.

Q. What was his explanation?—A. His explanation was that he had been managing the business for his brother and that he had been receiving a very low salary from his brother, and that the only additional compensation that he could get would be by means of making the false entries into the ledger account.

Q. Did he at any time indicate to you that the differences were due to an adjustment of a misgrading of material or waste paper?—A. No, sir; he did not.

Q. Did his books in any way reflect an adjustment back against him for a determination at some other point of a difference in the grading of the waste paper that he shipped?—A. I don't think I can answer that question the way you put it.

Q. I am sorry. I got a little bit mixed up on that one myself. What I mean is this: As a result of a determination at some point after the shipment took place——

The COURT. I think you are a bit mixed up again. Better think it over and let me ask a question while you are framing it.

Was there anything in the books which would indicate that a correction had been made because of a complaint made by Carrano, or anybody else, that the goods shipped by the invoice did not equal in content and quality what was set forth in the invoice?

The WITNESS. No, sir.

The COURT. Is that what you were trying to say?

The WITNESS. Yes, sir.

55 Q. Did you have a conversation with him regarding the type of waste paper that he was selling to Carrano?—A. On April 5, when we visited the defendant's place of business, we had a conversation with him and he stated to us that the Ohio Box Board had been complaining about the mix, and that in the future he was only going to make bales of news, corrugated, and mixed paper. I then asked him why there had been a complaint and he said that he had been putting some corrugated into his shipments of assorted kraft.

Q. Did you further get from him any statement as to the amount of corrugated he was selling to Carrano in a ratio to the kraft that he was selling?—A. No, sir.

Q. Nothing done about that?—A. No, sir.

Q. Did you examine the premises that he operated?—A. Yes, sir.

Q. What did you find it consisted of?—A. We found that the defendant had a warehouse where he baled paper.

Q. By baling do you mean bundling it up?—A. By baling we mean putting it in a machine which pressed it into a bale.

Q. And did you inspect the paper that was at the warehouse?—A. We saw paper at the time at the warehouse; yes.

Q. Did you see any particular types?

The COURT. I don't think it makes any difference what he saw

Mr. ROSSBACH. I won't press it. Nothing further.

Cross-examination by Mr. SOMMER:

Q. This was on April 5 you say?—A. The first visit was on April 5.

Q. And the next visit was when?—A. April 11.

56 Q. And the ledger account showed debits due to the company from Carrano, you say?—A. Yes, sir.

Q. And they did not at that time reflect payment?—A. Yes, sir.

Q. That's all.

Mr. ROSSBACH. Now I am confused.

Redirect examination by Mr. ROSSBACH:

Q. Your answer "Yes" to that, do you mean to say that at that time they did not reflect a payment of the amount shown?—A. The books reflect a shipment of a certain amount of assorted kraft.

The COURT. How about the financial end of it?

The WITNESS. Well, the ledger showed that—the ledger that he kept showed that, yes, sir.

The COURT. Did the books show that Carrano had made any payment for the paper shipped under those invoices, or was it just a charge registered against him?

The WITNESS. It was just a charge.

The COURT. Didn't indicate actual payment?

The WITNESS. No, sir.

Q. Then what did you mean before when you said that it showed a charge item and then another item in a different amount?

The COURT. No; he said that it showed an invoice amount of so much and then a debit charge. In other words, that the amount charged according to the invoice was shown on the invoice side, but the amount which was charged on the ledger to

57 Carrano was different than the amount charged for the same shipment, but there was no record of actual payment of either one.

The WITNESS. No, sir.

The COURT. All right, we will digest that information over the

evening and meet again tomorrow morning at 10 o'clock. The jury will be excused first.

(Adjourned to Thursday, January 25, 1945, at 10 o'clock A. M.)

NEWARK, N. J.,
Thursday, January 25, 1945.

(Case continued.)

(Appearances, as before.)

The COURT. You may send for the jury.

(Proceedings resumed in presence of the jurors.)

Mr. ROSSBACH. I believe, sir, that Mr. Markey was on the stand when we terminated yesterday's proceedings.

JOHN MARKEY resumed the stand.

Redirect examination (continued) by Mr. ROSSBACH:

Mr. ROSSBACH. I think the last series of questions were directed at the entries in the ledger as examined by this witness.

The COURT. Yes.

58 Mr. ROSSBACH. Explaining the difference in the amounts, and with that I am through with the witness.

Mr. SOMMER. I have no further questions.

The COURT. All right, you may step down.

Mr. ROSSBACH. The Government rests.

The COURT. Now, ladies and gentlemen, you were summoned not knowing that the Government was going to rest. Now we will have some legal argument in which you are not concerned, so you will be excused.

(Jury excused.)

Motion for dismissal of information

Mr. SOMMER. Your Honor please, at this time on behalf of the defendant Louis Bruno, reserving my right to interpose a defense in the event that your Honor should deny my motion, I move for a dismissal of this information or, in the alternative, a directed verdict of not guilty on each of the counts therein, upon the following ground: that the proof offered here does not sustain the charge in the indictment. The indictment charges that the defendant Louis Bruno was an agent or employee-manager of Teresa Bruno, trading under the name of T. Bruno Paper Stock Company at Hackensack, New Jersey, and that as such manager he became subject to the maximum price regulation number 30; that on various days he did willfully, knowingly, and unlawfully sell certain waste paper to James Carrano's Sons at prices in excess of the maximum price permitted under the regulation, each count of the indict-

ment being identical excepting that the date is different, the quantity is different and the place to which it was shipped is different.

59 The proof here is that there was a sale of paper, five carloads to James Carrano's Sons, that the paper was sold under an agreement that the price would be fixed subject to inspection at the mill; that though an invoice was sent at the time of shipment, the invoice price was to be either increased or decreased dependent upon inspection at the mill of the paper. The paper was then inspected at the mill; the mills sent reports to Carrano and Carrano then debited the account of T. Bruno Paper Stock and in forwarding their subsequent checks, took out the amount of money that was the difference between the invoice price and the actual price that should have been paid under the agreement.

According to the testimony of Carrano, there was never one cent paid to this defendant or to T. Bruno Paper Stock over and above the ceiling price for the paper that was delivered.

That is the testimony in the case; that is the proof in the case, and where the person who has purchased the merchandise testified that he did not pay one cent over the ceiling price, I say that there is no proof before this count that there was anything paid over and above the ceiling price.

For that reason I respectfully submit the motion should be granted.

(Argument of counsel for the Government.)

The COURT. I think, Mr. Sommer, that taking, as we must, the Government's case as admitted in the present posture of the case I shall be compelled to submit it to the jury, because it is a question of fact which is involved in all five shipments. I shall therefore deny your motion. You may have an exception.

60 I shall recess now in order to send for the jury.

(Which exception is hereby allowed and sealed accordingly.)

THOMAS F. MEANEY. [Sealed]

(Proceedings resumed in presence of the jury.)

(Mr. Sommer opened on behalf of the defendant.)

LOUIS BRUNO, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. SOMMER:

Q. Where do you live, Mr. Bruno?—A. Hasbrouck Heights, New Jersey.

Q. And what is your business?—A. Paper stock business.

Q. And in February and March of last year who owned the business where you worked?—A. Teresa Bruno.

Q. And who is Teresa Bruno?—A. My sister-in-law.

Q. And under what arrangement did you work there?—A. Getting $20 a week salary plus some agreement being made between my brother and I; commission basis.

Q. Now, in the conduct of that—About how much paper do you handle a week there?—A. Anywhere from 300 to 500 tons a week.

Q. And in connection with that business did you receive any orders from James Carrano & Sons?—A. Yes.

Q. I show you four purchase orders which are marked "D-1" for Identification, and ask you if those are copies of the orders which you received from James Carrano & Sons?—A. Yes.

61 Mr. SOMMER. I offer these in evidence.

Mr. ROSSBACH. Well, are they orders that apply to these particular shipments?

Mr. SOMMER. Yes.

Mr. ROSSBACH. Will you have him say so and I have no objection.

Q. Did these orders cover these shipments as well as other shipments?—A. I believe they do, because I don't know the dates or the car numbers after we shipped it out; they would be the orders.

The COURT. Well, there seem to be 18 cars here and only five in question. Can he pick out which related to these shipments?

Mr. SOMMER. Well, Carrano has testified that those are the orders that were given that included these shipments.

The COURT. Let him pick out the ones that applied, because there are 18 cars here and they are for different things. Here are five cars, three cars, another five cars, another five cars, and some of them relate to a different type. Pick out those which refer to these five shipments.

Mr. SOMMER. I won't be able to pick up the exact cars, but these mills they were instructed to ship stock to, they used all those kinds of paper.

The COURT. Yes; but there is only a question about five cars, five orders; are there five cars?

Mr. SOMMER. Well, then probably the five cars that the OPA picked up—I don't know—I wouldn't know——

The COURT. Well, is there any way of indicating which of these orders refer to those five cars?

Mr. SOMMER. I think I can pick up three of them for you.

62 The COURT. Suppose you do.

Mr. SOMMER. I cannot do it until I get the things in evidence.

The COURT. Well, if you can do it after you get the things in evidence you can do it before.

Mr. SOMMER. But I have another paper which I have to use.

The COURT. Ask him about the other paper.

Mr. SOMMER. I don't know whether he can pick it out or not, but the papers speak for themselves.

The COURT. Let's see what the other paper is.

Mr. SOMMER. This he doesn't know anything about.

The COURT. What is that?

Mr. SOMMER. That is an order from Taggart with the corresponding numbers on it.

The COURT. Taggart to whom?

Mr. SOMMER. This is order from Taggart to James Carrano.

The COURT. How could he identify that and how are you going to get it in evidence?

Mr. SOMMER. It has been identified.

The COURT. Is it in evidence?

Mr. SOMMER. No; it has been identified, but I am going to offer it in evidence.

The COURT. All right.

Mr. SOMMER. And the numbers on there and the numbers on here——

The COURT. Offer it in evidence.

Mr. ROSSBACH. I object to it, your Honor, please, on this ground: that your Honor has limited the inquiry to the five counts in the information; I think that anything that is contained on
63 these sheets would only tend to confuse it by a misdescription of the character of the paper enumerated on these sheets. It includes not only corrugated but all types of paper.

The COURT. Let me see it.

Mr. ROSSBACH. Now we have excused the witness from the Taggart Corporation and from Watertown or from Rittman, Ohio.

The COURT. What are these pencil notations on here, Mr. Sommer?

Mr. SOMMER. They represent the order numbers.

The COURT. Order numbers to him?

Mr. SOMMER. No. Your Honor will find——

The COURT. What are these pencil notations on here?

Mr. SOMMER. Those are showing the corresponding items. Now, on the first one you won't find those order numbers, because the first and second ones I believe, are Ohio. The last two are Taggart.

Mr. ROSSBACH. May I suggest something to the Court, please?

The COURT. What is it?

Mr. ROSSBACH. And this won't do Mr. Sommer any harm I am sure. If it is Mr. Sommer's intention to offer those in evidence for the purpose of establishing that they contain a statement to

the effect that it is "Subject to inspection at the mill" I have no objection at all to an instruction from the Court to the jury that they definitely so show. Other than that, my only objection to their offer in evidence is the fact that they contain so much other unrelated matter, that it may tend to confuse the issue as it is here presented.

The COURT. Well, let's find out. What is your purpose in introducing these, Mr. Sommer?

64 Mr. SOMMER. First, to show what the orders were that were sent to him by Carrano; to show the terms of the orders, and to show the terms of the orders from the mill to——

The COURT. Let me call attention to something here [indicating to Mr. Sommer at side bar].

Mr. SOMMER. I offer in evidence these orders identified by Carrano as having been the orders which he sent to T. Bruno which cover the cars in question.

Mr. ROSSBACH. And I renew my objection for the reasons stated.

The COURT. Well, I think that it is proper to show such of these orders, orders from Carrano to Bruno, as correspond with the numbers in the list identified by Carrano was that?

Mr. CARRANO. Yes, sir.

The COURT. I shall allow those two to go in.

Mr. SOMMER. There are three covering Taggart.

The COURT. The other covers what?

Mr. SOMMER. The other is the order covering the cars shipped for Ohio.

The COURT. All right, I will allow all of them.

(Received and marked "Exhibit D–1.")

Mr. SOMMER. Then I offer in evidence the order from Taggart Corporation to James Carrano.

Mr. ROSSBACH. Same objection for the same reason.

The COURT. I will allow it.

(Received and marked "Exhibit D–2.")

Q. Now, Mr. Bruno, in connection with the orders that you received from James Carrano, did you ship any merchandise to Ohio?—A. Yes.

65 Q. I show you G–1 for identification and ask you if that is an invoice covering one of the shipments made to Ohio?—A. Yes.

Q. I now show you G–3 and ask you if that is an invoice from T. Bruno Paper Stock to James Carrano covering the second one of those shipments?—A. Yes, sir.

Q. I now show you——

The COURT. They both call for carload of assorted kraft?

The WITNESS. That's right.

Q. I now show you G–5 and ask you if that is an invoice from

you to James Carrano covering one of the shipments that was made in compliance with the orders that you received from Carrano to New York; Watertown, New York?—A. Yes.

The Court. What did that call for?

The Witness. No. 1 Assorted Kraft.

Q. I now show you G–7 in evidence, and ask you if that in an invoice from T. Bruno Paper Stock to James Carrano's Sons covering another carload that was shipped to Watertown, New York?—A. Yes.

The Court. What does that call for?

The Witness. No. 1 Assorted Kraft.

Q. I now show you G–8 and ask you if G–8 is another invoice from T. Bruno Paper Stock to James Carrano's Sons covering a third carload that was shipped to Watertown, New York?—A. Yes, sir.

The Court. What does that call for?

The Witness. No. 1 Assorted Kraft.

66 Q. Now, in connection with these sales to Carrano, what was the agreement between Carrano and yourself as to the price that you would receive for paper shipped?

Mr. Rossbach. I object to that.

A. Ceiling——

Mr. Rossbach. On the ground that the purchase order, the invoice and all other related papers offered in evidence speak for themselves; and as a matter of fact, the evidence is that there was no other agreement except as stated on the order.

The Court. No; I think this is a matter of evidence as to what actually happened. We are not now tied down by such rules as might affect a civil suit for proving existence of a contract or civil responsibility; we are now questioning this man's criminal responsibility if any. What was the arrangement made?

The Witness. To receive ceiling price, any stock I shipped.

Q. And who was to determine the quantity and quality of the paper which you shipped?—A. The paper mill.

The Court. You sent out an invoice for five cars of No. 1; what was it?

The Witness. Assorted Kraft.

The Court. No. 1 Assorted Kraft, and you charged for these five carloads on the basis of No. 1 Assorted Kraft in the invoice?

The Witness. Yes.

The Court. All right. Go ahead.

Q. Why was it invoiced as No. 1 Assorted Kraft?—A. Why?

67 Q. Yes.—A. Could I explain my own way?

Q. Yes.—A. Your Honor——

The COURT. I don't know how you can explain it anybody else's way.

A. Well, you see, the packing house, we pack all grades of stock, assorted kraft, corrugated kraft, newsprint, and mixed paper which is a kraft paper; any time we didn't have any carful of No. 1 Assorted Kraft we could put other grades in and call it Assorted Kraft; anything. Then the paper mills that make the inspection as to weights and quality make reports to Carrano; when Carrano receives those reports they pay us accordingly and make such adjustment in our payment.

The COURT. Well, do you know what you paid out?

The WITNESS. Your Honor—we have no small scale, you see; bales come about 1,000, 1,100 pounds; we have a platform scale, and when I give an order to my men they shall buy an order of assorted kraft, they know that we can put something else in that car in case we haven't got enough assorted kraft to fill up the car, we put something else in it.

The COURT. Let met ask you. I think in this Pennsylvania car 92,203—correct me if I am wrong—that you say contained 25,620 pounds——

The WITNESS. That is correct.

The COURT. In that there was 400 pounds of assorted kraft.

Mr. SOMMER. 400 and some odd pounds of assorted kraft.

The COURT. The rest was corrugated?

The WITNESS. The rest was corrugated.

68 The COURT. Now, would you know before you sent a car out if it contained 25,200 pounds of corrugated and only 400 pounds of kraft, would you ship it out as kraft?

The WITNESS. If I know; no, sir.

The COURT. Well, wouldn't you know?

The WITNESS. There is no ways to know, because most of the time I am not there and the stock is not weighed separately. I will explain about the scale we have there; we have a 28' scale; we put the load on the truck and weigh the whole truck and deduct the truck, and the rest is merchandise. The reason we bill it at No. 1 Assorted Kraft, that's what the order calls for, knowing that we won't get paid—I ain't at the mills—they make all this inspection; in fact one of those bills there we put in some stock was above, better stock than No. 1 Assorted Kraft. There was a stock in there, 400 some odd pounds worth $2.75 per hundred, which I believe it is $55 a ton—we still billed it out at $35. And when we get those reports from Carrano, then Carrano takes the difference we overcharge, he takes it off. If we got any money coming he credits to us.

Q. Now, when you get the orders do you personally fill the orders?—A. What do you mean do I personally fill the orders?

Q. Do you personally go out and load the cars or anything?—A. No, sir.

Q. What do you do, send orders out to the plant?—A. That's right; we have an office there with a girl who takes care of the orders. We have a foreman—not exactly a foreman, a fellow, one of the old fellows in the shop—he loads the truck.

69 The COURT. How many employees have you?

The WITNESS. Right now, anywhere from eight to 12 people. We lose them every day. We hire them every day.

Q. When you give an order for a load of assorted kraft to be shipped, do you see it actually shipped?—A. I do not, sir.

Q. Now, do you give any instructions if there isn't sufficient kraft in the place what they are to put in the load?—A. Well, you see, they generally stop in the office and say, "What else can we put in the car in case we run short of kraft?" The girl says, "Well, there is mixed paper on this order, or corrugated, or newsprint." They go according to that.

Q. Now, do you know how much assorted kraft you had in stock, around the time of these orders?—A. Well, I wouldn't know exactly, but it is quite a load, because we have quite a big place and bales are thrown all over the place.

The COURT. Well, don't you separate your paper into different parts?

The WITNESS. We do—well, one time we make a bale of mixed, which is scrap; another newsprint; another No. 1 Assorted Kraft; another time something else.

The COURT. Well, if you are going to sell assorted kraft you are not going to give a man newspaper.

The WITNESS. In case we run short in kraft; yes.

The COURT. No; if you don't run short.

The WITNESS. If we don't run short we weighed——

70 The COURT. That's what I say. Then do you separate the different types of paper into different grades?

The WITNESS. We do.

The COURT. Or do you put it all together?

The WITNESS. Not all together, it is one bale here, one bale here—all mixed up through the plant.

Q. Now, this corrugated paper; is that kraft?—A. Most of it is; yes.

Q. Do the mills accept it?—A. Yes.

Q. And then you get paid according to what it is worth; is that correct?—A. That's right; they make the price.

Q. Now, in connection with these sales did you receive any word from James Carrano & Sons about there being any trouble with the merchandise that you sent out?—A. Well, after he receives his report he generally calls me up and says, "We have so and so here.

now what do you want to do with that car?" He is dissatisfied. I say let the paper mill decide because they know better than we do.

Q. Is that the ordinary thing to have happen in the business?—Oh, yes.

Q. In connection with these particular cars was there an adjustment made on the bills?—A. Yes.

Q. And are these debit memos that you received from Carrano?—A. Yes, sir; there is one, there is a second one; yes, sir.

Q. Now, in following out this procedure, did you receive any moneys above the ceiling price for any of the paper which you shipped?—A. No, sir.

Mr. SOMMER. You may cross-examine.

71 Cross-examination by Mr. ROSSBACH:

Q. You mean that, Mr. Bruno, that you didn't get any money over the ceiling price, over the maximum price, for the paper that you shipped?—A. No, sir; I didn't.

Q. Well, you know the difference between assorted kraft and corrugated paper; don't you?—A. Yes, sir.

Q. And as a matter of fact, when you ship it and you don't have a full carload to pack and you find that part of the carload is assorted kraft and part is corrugated, you bill it that way; don't you?—A. We haven't got any separate weights; we have two kinds of merchandise—I wouldn't know what's what.

The COURT. How do you know how many pounds you ship out?

The WITNESS. Well, we know the pounds you see.

The COURT. How do you know?

The WITNESS. We have a platform scale for trucks that go out; there is a certain truck takes the load out, pulls on that scale empty, then he pulls on the scale loaded and subtracts the car weight, and the difference is the stock.

Q. So that that is your explanation as to these five invoices, that the entire lot or entire load is billed as assorted kraft?—A. That's right.

Q. You simply throw it in, don't distinguish between the different grades and simply rely on the mill to make a final inspection?—A. That's right.

Q. You bill it as assorted kraft?—A. That's right.

Q. And as a matter of fact, referring to Exhibit G-1, you billed it as assorted kraft and charged the total of $635.59?—A. Probably that's the amount.

Q. Well, take a look. Isn't it?—A. That's right.

72 Q. And you actually received $635.59 for it, didn't you?—A. Yes, sir.

Q. Now, this is the invoice that is dated March 31, 1944, and was shipped on C. B. Q. 22,160; you then got your check from Carrano; is that right?—A. Yes, sir.

Q. Now, what amount did you enter in your books in connection with the accounts receivable on that particular shipment?—A. I wouldn't know right offhand.

Q. Do you have your books with you?—A. No.

Q. You don't have your ledger accounts?—A. No.

Q. Did you enter this amount, do you know?—A. No, sir.

Q. Why not?—A. Because that was the arrangement I made with my brother and myself, that the difference, whatever went in the ledger, was supposed to be mine.

Q. Well, was the amount that you actually entered in the ledger less or more than that?—A. Less than that; the company ledger.

Q. Where did you keep a record of the actual amount that you received from Mr. Carrano?—A. I kept it in the office.

Q. And what happened to the difference between the amount you actually received and the amount you had entered in the ledger; you kept it?—A. That's right.

Q. That was your money?—A. That's right.

Q. Now, you heard Mr. Markey testify that on his examination of your books he found that there was some item of four hundred and seventy-odd dollars?—A. That was the difference.

Q. So it was the difference between $479 and $635 that was your take on this shipment of March the 31st, 1944?—A. That's right.

Q. I want to correct that; it was $479.69 that was testified to by Mr. Markey; so that it was the difference between $476.69 and $635.59 that you kept?—A. That's right.

73 Q. As your—as your what?—A. As my commission. That was the agreement I made with my brother.

Q. Now, the shipment that was made on February the 2nd, 1944, B. & O. car 38,562 calls for an invoice payment of $505.44. Did you receive that actual amount from Mr. Carrano?—A. Yes, sir.

Q. And the shipment on Pennsylvania car 92,203 calls for invoice payment of $461.16. Did you receive that amount from Mr. Carrano?—A. Yes; with one explanation that adjustments were made on every one of these cars.

Q. We are going to get to that. $461.16 is the amount that you made?—A. Probably it is because that is my invoice.

Q. And the fourth one, $812.07?—A. Yes, sir.

Q. And the fifth, $603.36. All right. Now, which one, Mr. Bruno, was an adjustment made on?—A. Which one? I wouldn't know unless I would look at the debit memo. I don't know. I believe, sir, that that is not the only debit memos.

Q. These are the only ones we have got now.—A. Yes.

Q. Based on your reference to this or anything else, including your books and records, tell us on which of those particular shipments a downward adjustment was made because of the mill find-

ing there had been a misgrading?—A. Well, if the car numbers on these—I will pick them out for you. Here is one of them.

Q. Now, wait a minute—"There is one of them"—won't tell us anything. Which one is it?—A. C. B. Q. 25,293.

Q. That is invoice marked G-8 in evidence. That is one of them.—A. Seems to be one of these cars; not on here, I don't know; I may be wrong.

Q. Could that be because there was no debit memo issued on it?—A. That is something I cannot say, sir.

74 Q. I am asking you to refer to anything that is available to you for the purpose of telling us which of those five shipments became subject to a downward adjustment. What do you mean when you lay the Exhibit G-3 to one side; do you find it or don't you?—A. I don't say I am right, I don't know, I may be wrong.

Q. Well, let's try not to be, though; I mean let's try not to be wrong.—A. Suppose I am not smart enough to figure out. I am trying my best to find it.

Q. All right.—A. This is one of them.

Q. What do you mean by that? This is Exhibit G-1, C. B. Q. 22,160; that was subject to downward adjustment on a debit memo, right?—A. Probably was. B. & O. here. I don't see this one—I don't see the others. I believe some are missing.

Q. I will help you. Here, this is Exhibit G-3, Pennsylvania 92,203; that is represented by this one, isn't it.—A. Well, I missed that.

Q. All right, I found it for you. We are all right. So that there are three that were subject to a downward adjustment on debit memos; is that right?—A. Yes.

Q. Now, let's take a look at that. This first shipment here was designated for railroad car number Pennsylvania 92,203 on March the 30th, 1944. Can you explain why it was that the debit memo was issued on April the 13th, 1944, two weeks later or three weeks later?—A. Probably that's the time Mr. Carrano got the report from the mill.

Q. As to C. B. Q. 22,160, dated March the 31st, 1944, can you tell us how that happened to come through by debit memo on the same day as the other?—A. That's the time I got from Carrano.

Q. What I am getting at, Mr. Bruno, is this. Between the time you made those shipments and the time you were issued the

75 debit memo, you were visited by the Office of Price Administration agents, were you not?—A. I believe I was.

Q. And as a matter of fact, you communicated with Mr. Carrano or he with you, and you then learned that he had been contacted by the Office of Price Administration agents, didn't you?—

A. The only time Mr. Carrano talked to me when he got these debit bills on my cars.

Q. And as a matter of fact, it was after the visit of the Office of Price Administration that all three of these readjustments were made; isn't that right?—A. Probably it is, I don't know. That's the time I got them from Carrano.

Q. And directing your attention specifically to the other two, there was no downward adjustment made as to these shipments, was there?—A. I wouldn't say no, because probably some more memos.

Q. Well, I will take that answer. Have you ever had a downward adjustment debit against you for a misgrading of paper?—A. Yes, sir.

Q. By Carrano?—A. By Carrano; yes.

Q. And the one invoice that I just showed you that you said was paid in the sum of $505.44 was actually entered by you in the books for $379.08; and that was on March the 10th, 1944; you kept the difference?—A. Yes, sir; probably did, I am not sure now.

Q. And on March the 1st, 1944, an entry of $603.36, as represented by the invoice, was actually entered in your ledger at $452.52, making a difference of $155. You kept the difference there?—A. Probably; yes.

Q. And on March the 21st an invoice, amount of $812.07 was entered in your ledger at $609.06, which makes a difference of about $203. You kept the difference there?—A. Probably so; yes.

Q. And as to that invoice which shows a payment made of $635.59, you entered it in the ledger as $476.69.

76 Mr. SOMMER. I object to that question; the invoice doesn't show a payment made.

The COURT. No; the invoice shows a charge made.

Mr. ROSSBACH. All right, I am sorry. I am probably not as grammatical as Mr. Sommer would like me to be.

The COURT. No; he is not objecting to your grammar, he is objecting to your accuracy.

Q. (Continuing.) That the $635.59, as shown on the invoice which you admitted was paid to you, was actually put in the ledger by you at $476.69, was it not?—A. Probably was.

Q. And you kept the difference there?—A. Probably so.

Q. And again, the item of $461.16, represented by that invoice and which you say Carrano paid to you, was entered in the ledger by you at $345.89 and you kept the difference there?—A. Probably so; yes.

Q. Now, Mr. Bruno, you have identified some purchase orders here, and I am particularly referring to that which has been marked in evidence as "Exhibit D-1." Now, let's take a look at

that. You have, first of all, the purchase order issued by James Carrano to you for the purchase of material?—A. That's right.

Q. And the first order is for 5 cars of waste paper, the quality to be of assorted kraft, mixed paper, news, over-issue news, P. S. #1, soft brown kraft, kraft-back waste, and #1 Column Ledgers, #1 White Ledgers—I guess that's colored ledgers—and #1 Old Corrugated Containers. Now, each one of those categories represented different grades of waste paper, did they not?—A. Probably did.

Q. Well, now, does assorted kraft mean anything different to you?—A. Pardon me. You asked——

77 Q. Does corrugated—— A. Pardon me. You mean each one of those orders?

Q. No, I mean each one of these classifications: Assorted Kraft, Mixed Papers, Overissue News, News, Colored Ledgers, White Ledgers—they all represent different grades of waste paper?—A. That's right, on this particular order.

Q. All calling for different maximum prices?—A. That's right.

Q. But you in the process of your operation wouldn't concern yourself with that; you just bulked them together, you threw them all on a freight car till the freight car was packed nd then billed them all as assorted kraft and let somebody else do the separating?—A. Not exactly all grade; a couple of grade we did.

Q. All right. But before you said that is what you did, and those bills show you did; you just listed it assorted kraft, and let the fellow on the other end do the work.—A. On account we ain't got the weight.

Q. Referring to the second sheet, we have a definite order from Carrano to you for #1 Assorted Kraft five cars. That is what he wanted; right?—A. Yes.

Q. And you knew that is what he wanted when he ordered this?—A. That's right.

Q. And he also stipulated the price to be the ceiling price plus a dollar for handling, that is for loading?—A. Yes.

Q. And he also said that the cars had to be loaded in accordance with the ODT regulations?—A. That's right.

Q. You knew about those too?—A. Yes, sir.

Q. So that, in your attempt to fill this order, you then supplied him with some waste paper, did you not?—A. That's right.

Q. And you issued an invoice to him representing the amount you shipped under this order, and on your order number B-9531; right?—A. Probably is.

78 Q. And that invoice took this form, did it not?—A. That's right I guess.

Q. Well, now, take a look. Let's be sure of some part of what we are doing.—A. This car is not marked on this one.

Q. I am referring you now to the order number, the order number marked on here, and asking you whether this invoice represents a shipment under this purchase order?—A. Very difficult for me to classify; first thing, I didn't write this.

Q. You identify those sheets?—A. As orders, but not those numbers I said.

Q. It was explained to the Court when they went in evidence that those numbers represent your numbers.

Mr. SOMMER. But he has said what he thinks they are.

A. I did not check these pencil numbers, because I did not write these down, but this is the order that I got from Carrano. In other words——

Q. And does this invoice represent—— A. Probably represents one car of those five cars.

Q. Can you tell me whether it does or does not?—A. I guess it does, because I sent the bill in.

Q. And on that invoice you conformed the invoice with the order number insofar as it describes the type or grade of waste paper that you were shipping, did you not?—A. That's right.

Q. You put down "Assorted Kraft"?—A. #1 Assorted Kraft.

Q. And on that shipment you shipped 25,635 pounds of what you said was assorted kraft, and charged $1.75 per hundredweight.—A. All right.

79 Mr. ROSSBACH. I ask that the invoice just referred to be marked for identification.

(Marked "G–15" for Identification.)

Q. All right. Now, going down there on that same order, there is indicated on this purchase order a bill number 9541, and I show you an invoice and ask you whether that is an invoice which represents a shipment made by you to Carrano acting on that purchase order?—A. I wouldn't know, sir, because this number—it is not on here; it is quite different on this order number, so it might be, maybe not.

Q. Is there anything to identify this shipment represented on this invoice as coming within this purchase order?—A. I wouldn't be able to say that, because I haven't got anything marked here that represents this bill. Could be. Could be one of the bills invoiced.

Mr. ROSSBACH. I ask that this be marked for identification.

(Paper marked "G–16" for Identification.)

Q. There appears also bill number 9576. Can you tell me whether that invoice represents a shipment?—A. Could be, the same date.

Mr. ROSSBACH. I ask this be marked for identification.

(Marked "Exhibit G–17" for Identification.)

Q. As to B-9644—Let's skip that one—As to B-9645, your answer is the same as to this invoice?—A. Yes.

Mr. Rossbach. I ask that this be marked for identification.

(Marked "Exhibit G-18" for Identification.)

80 Q. Now, refer to the next purchase order please. There we have order dated January 20, 1944, addressed to you by Mr. Carrano calling for three cars, the quality of the waste paper to be assorted kraft and mixed papers, right? So that there we have a bill number 9246. Can you identify that as being within that same answer? It wouldn't help you if you looked at these things, would it?—A. No, it won't help me at all.

Mr. Rossbach. I ask it be marked for identification.

(Marked "Exhibit G-19" for Identification.)

Q. And as to bill number 9305—I haven't got that one. This last one, B-9325, this invoice is dated February the 12th, 1944. Can you tell me whether that represents a shipment coming within that purchase order?—A. There is no order number.

The Court. Who made these pencil notations on these orders from Carrano to you?

The Witness. Probably Mr. Carrano.

Mr. Sommer. Your Honor please, those are from Carrano's files and produced by Carrano.

The Court. Well you offered them.

Mr. Sommer. Yes. They were produced by Carrano yesterday as records of his, and I believe these other bills are photostatic copies of bills in the records of Carrano with notations on them by Carrano.

The Court. They are photostatic copies of Bruno's invoices.

Mr. Sommer. Bruno's invoices to Carrano.

The Court. Which bear the same numbers as those which are contained on the orders from Carrano to Bruno?

81 Mr. Sommer. Correct; and those are taken from Carrano's files as well. In other words, all these papers are from Carrano's files with Carrano's notations on them.

The Court. And you have produced them as part of your defense?

Mr. Sommer. That's right, as the copies of the orders from Carrano.

Mr. Rossbach. I ask that this be marked for identification.

(Marked "Exhibit G-20" for identification.)

Q. Now, referring to the last of this series of purchase orders we find a quantity order for five cars of assorted kraft with the legend "You may include #1 Mixed Papers," right?—A. Yes.

Q. And that order is dated February the 11th, 1944, calls for immediate delivery, and I show you an invoice bearing the number B-9364, dated February the 17th, 1944, and ask you whether

that includes the shipment under that purchase order?—A. Those are not my papers. I wouldn't be able to say that.

Mr. Rossbach. I ask that this be marked for identification.

(The paper is marked "Exhibit G-21" for identification.)

Q. Here is one——

The Court. Look now, how long are we going to be on these things?

Mr. Rossbach. One, two, three, four more.

The Court. Show them to him altogether.

82 A. I mean, those are all Carrano's bills and notations; I wouldn't know anything about it.

Q. Here are three more.

The Court. Look over those three; see if you know anything about them.

The Witness. No, sir.

The Court. You don't know whether they correspond or not?

The Witness. No.

Mr. Rossbach. I ask that they be marked for identification.

(Marked "Exhibit G-22-23-24" for identification.)

Q. Now, Mr. Bruno, on this invoice issued by you on March the 15th, 1944, you have listed No. 1 Assorted Kraft, 18,595 pounds at $1.75 per hundredweight?—A. Yes.

Q. And then you have No. 1 News, 3,760 pounds at 75¢ per hundredweight?—A. Yes, sir.

Q. How did you weigh and determine the one-hundredweights of each grade of newspaper with respect to that particular shipment?—A. Well, we have a lot of small customers that weight up their own bales. They mark the bales on the side.

Q. This is a shipment made to Carrano.—A. That's right.

Q. (Continuing.) Under a purchase order?—A. That's right.

Q. In that particular case you did weight the news and the assorted kraft?—A. The news was weighed when it come in my plant with the weight on the side of the bale.

Q. And here on the bill of February 2d, 1944, you have 28,065 pounds of assorted kraft, 40,965 of assorted kraft and 4,010 pounds of Triple Assorted Kraft?—A. That's right.

83 Q. In that particular case you distinguished between the grades again.—A. That Triple Asorted Kraft was picked up in Paterson, I can tell you right where I picked it up—it was picked up in Paterson, weighed on the Paterson scale and I knew just what it was.

Q. So that in those instances there was a separation of the items on your bills?—A. That 4,000 pounds probably was rolls of new kraft paper.

Q. Do you remember, Mr. Bruno, of any debit memo that was issued against you by Carrano with respect to any one of the ship-

ments of waste paper indicated on any of these invoices that I have just shown you?—A. I wouldn't know right offhand.

Q. Do you recall anything, or can you refer to anything that would give you some recollection of it?—A. No.

Q. And was the shipment that you made under these invoices and represented by them actually assorted kraft?—A. Well, probably was something else in there.

Q. Then wouldn't it be likely that upon an inspection by the mill you would get a debit report?

The COURT. Don't argue with the witness whether it would be likely or not. I mean, under his statement, he would have if he followed out his ordinary procedure.

Q. And yet you have no recollection of having received such a debit memo on this shipment. You remember seeing Mr. Markey up at your place of business, do you not?—A. Yes, sir.

Q. And having discussed with him the manner in which you kept your books?—A. I believe I did.

Q. Did you tell him that you had possibly, as you say now, received a debit memo on these shipments prior to the time he came?—A. Probably he didn't even ask me, sir.

84 Q. You don't remember him asking you?—A. No, sir.

Q. But you did tell him that the difference between the entry in your ledger and the amount shown on the invoices and actually received, represented additional commissions due you?—A. I don't know if I called it commission. I made him understand that was my share, yes.

Q. You also remember communicating with the OPA through or with your then attorney, Mr. Matthew Krafte, who is sitting next to Mr. Sommer?—A. Communicating with the OPA? No, sir.

Q. You don't remember discussing those items with the OPA.—A. No, sir. In my office? Yes, Mr. Markey and the other agent over there, Mr. Sewell, I give them all the cooperation they wanted.

Q. And through your lawyer Mr. Krafte?—A. No, sir.

Q. I have nothing further.

Mr. SOMMER. All right. We will rest.

The COURT. Now, until 2 o'clock, ladies and gentlemen of the jury, you will be excused because I have a matter to attend to which will take me about 20 minutes, so you will have the benefit of that extra 20 minutes. Recess until 2 o'clock.

(Noon recess.)

85 AFTERNOON SESSION

LOUIS BRUNO resumed the stand.

The COURT. All right, proceed.

Mr. ROSSBACH. I said I was through.

Re-direct examination by Mr. SOMMER:

Q. Mr. Bruno, when Mr. Markey and Mr. Sewell from the OPA came to your place of business, did you permit them to go through your books?—A. Yes, sir.

Q. And make a complete analysis of your books?—A. Yes, sir.

Q. Mr. Krafte is still your lawyer, isn't he?—A. Yes, sir.

Q. And did you ever have a conference with Mr. Markey and Mr. Sewell and Mr. Krafte together?—A. No, sir.

Q. Did you ever have a conference with Mr. Krafte and another agent of the OPA?—A. No, sir.

Q. When this readjustment came through on the prices, did you and your brother readjust your figures as well?—A. Yes, sir.

Q. That's all.

Mr. ROSSBACH. No questions.

JOSEPH V. CARRANO, recalled, testified on behalf of the defendant, as follows:

Direct examination by Mr. SOMMER:

Q. Mr. Carrano, I show you D-1 and D-2 and upon them there appear certain figures in pencil. Do you know in whose handwriting those figures are?—A. Yes, sir.

86 Q. Whose handwriting are they in?—A. My bookkeeper.

Q. And where did those two exhibits come from?—. A. Came from our file.

Q. Now, I show you G-1-3-5-7-8. Those are photostatic copies are they not, of invoices that were taken from your files?—A. Yes, sir.

Q. And upon those there appear to be pencil notations with numbers similar to the numbers upon D-1 and D-2. In whose handwriting are those figures?—A. Also from our bookkeeper.

Q. Now, would there be any way for Mr. Bruno to know anything about those figures?

Mr. ROSSBACH. I object to that. I don't see how it becomes material as to whether there was any way for these defendants to know something.

The COURT. How would he know whether there was or not?

Q. Let me put it to him this way. I withdraw that question. Did Mr. Bruno ever see those figures?—A. No, sir.

The COURT. Not to your knowledge.

The WITNESS. Well, I am positive. Those are our records. The only time he saw them was now, here at the court.

The COURT. How do you know that?

The WITNESS. Because I know our records are kept——

The COURT. Do you have them in your own personal possession all the time; to your knowledge you know he hasn't seen them?

The WITNESS. Yes, sir.

Q. That's all.

87 Cross examination by Mr. ROSSBACH:

Q. Mr. Carrano, I show you what have been marked for identification as Exhibits G-15 to G-24 inclusive, being invoices on the stationery of the T. Bruno Paper Stock directed to your concern, and then I direct your attention to the purchase order which has been marked in evidence as Exhibit D-1 and ask you to compare the items on those invoices with the items on the purchase order and tell us, if you can, whether these items on the invoices are items delivered under your purchase—under that purchase order?

Mr. SOMMER. I object to that as not being within the scope of the direct examination of this witness.

The COURT. Are they his records?

Mr. ROSSBACH. These have just been identified as his and his pencil marks on them.

The COURT. What is your question now?

Mr. ROSSBACH. Whether the items on these invoices are items which are included in the delivery under these purchase orders.

Mr. SOMMER. I have no objection to it provided he makes Mr. Carrano his own witness.

The COURT. No; I think it will be proper as cross-examination, because you have asked about these records.

Mr. SOMMER. I asked about one particular record.

The COURT. I think I will allow it in the general scope of cross-examination.

A. Want me to look at them?

Q. Yes.—A. These one, two, three, four invoices apply to our order number 3937; they were shipments that were made against this order.

88 Q. And the items as shown on there supposedly corresponded with the items purchased on the purchase order, do they not?—A. According to the——

Q. And were charged accordingly on these bills?—A. That's right, sir.

Q. Charged to you?—A. Yes, sir.

Q. And were they paid by you?—A. Yes, sir.

Q. In the amounts as shown on these bills?—A. On the invoices; yes, sir.

Q. Go ahead as to the other.—A. On our order 9871, this one shipment applies to that order.

Q. That is B-9325?—A. Yes.

Q. How about this one?—A. That is B-9245, yes; that's right. There is one there and this applies——

Q. These two apply to that order?—A. Yes, sir.

Q. And did you pay the amounts as shown on the invoices in those cases?—A. Yes, sir.

Q. All right, go on.—A. Against our order number 3908, those invoices were shipped.

Q. And there are four of those?—A. Four of those; yes, sir.

Q. And in each case you paid the amount as shown on the invoices?—A. Yes, sir.

Q. Now, sir, with relation to these last four invoices, and as compared with the purchase order, you ordered on this purchase order assorted kraft, did you not?—A. Yes, sir.

Q. And then gave the permissive statement, "You may include #1 Mixed Papers."?—A. Yes, sir.

Q. Now, was it your practice with Mr. Bruno that where you ordered assorted kraft, that he was privileged to sell you some other type of paper, but nevertheless would list it as assorted kraft on his invoice to you? Did you have such an arrangement with him?—A. Well, no, sir; we didn't have any arrangement.

89 Q. Well, that's all. That's all I want to know.

The COURT. Now I think you have gone about as far as my broad extension of the limits of cross-examination will go. If you want to call him in rebuttal you may do so.

Mr. ROSSBACH. Nothing further.

Mr. SOMMER. Nothing further from this witness.

MATTHEW KRAFTE, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. SOMMER:

Q. Mr. Krafte, you are a member of the bar of the State of New Jersey?—A. I am.

Q. And you are Mr. Bruno's counsel?—A. I am.

Q. Was there ever a conference between Mr. Bruno and any representative of the O. P. A.?—A. No, sir.

Q. Did you personally have a conference with Mr. Sewell and Mr. Markey?—A. Yes, sir.

Q. How many conferences did you have with them?—A. Two.

Q. That's all.

Cross examination by Mr. ROSSBACH:

Q. Were they right in your office?—A. At my office, once the first time, and the second time at the O. P. A. office. I think that is in what is known as the Aetna Building, Aetna Life Insurance Company Building in Newark.

Q. And was that as a result of Mr. Bruno's notifying you that

he had been contacted by them?—A. That was the result of Mr. Bruno retaining me.

Q. You want to put it your way?—A. No; I don't.

90 Q. All right. But I mean Mr. Bruno contacted you didn't he?

The COURT. Mr. Bruno got in touch with him.

Q. Yes, sir. Mr. Bruno got in touch with you and told you that the OPA had been to see him?—A. Yes, sir.

Q. That's all.

Mr. SOMMER. We rest.

Mr. ROSSBACH. I would like to offer some rebuttal, if your Honor please.

The COURT. All right.

JOSEPH V. CARRANO, recalled, in rebuttal, on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Carrano, I have previously shown you these exhibits which have been marked G–15 to G–24 inclusive. I now show you a group of invoices purportedly issued by your company to the Taggart Corporation. Will you just run through those, please, and tell us whether they correspond to the invoices previously marked for identification?—A. Yes, they do.

Q. All right, sir. Now, they represent purchases by you from Bruno and by you in turn sold to the Taggart Corporation, do they not?—A. Yes, sir.

Mr. ROSSBACH. At this time I offer them in evidence.

Mr. SOMMER. Objected to as irrelevant and immaterial, having nothing to do with the issue here.

91 Mr. ROSSBACH. Your Honor please, they all relate to the very evidence which was admitted in evidence by——

The COURT. They all relate to the numbers on the paper introduced by Mr. Sommer?

Mr. ROSSBACH. That's right, sir.

The COURT. They may be received and marked in evidence. Mark them as one exhibit.

(Received and marked "Exhibit G–25" in evidence.)

Q. Now, Mr. Carrano, with relation to those particular items that you have just identified, is there anything in your records, or do you have any recollection of any one of those transactions being subject to a downward adjustment because you received notice that there was an item of mis-grading on them?—A. Well, I cannot answer that truthfully because I don't have the records.

Q. Well, you were asked to bring your records as they related to the sales and purchases of waste paper from Mr.——

The COURT. Did you have any other downward adjustments in your dealings with this man?

The WITNESS. Oh, yes.

The COURT. Wait a minute; in the last six months?

The WITNESS. Oh, yes, sir.

The COURT. Of the same type as this?

The WITNESS. I don't know whether it relates to any of these shipments.

The COURT. I am talking about the case of misgrading of paper such as existed here.

The WITNESS. Well, I cannot honestly truthfully say, but there have been times in the past, previous to this shipment where
92 he has received debits for inferior stock which is misgrading. Now, whether it is the actual two grades involved or not, I cannot answer truthfully.

The COURT. Since ceilings were set on paper?

The WITNESS. Yes, sir.

Q. And was that as a result of your getting information from the Taggart Corporation?—A. From the consignees; yes.

Q. No, no; I am talking about anything that you did. You debited Mr. Bruno because you got some information, not from any consignee, but from the Taggart Corporation.

The COURT. Most of these refer to the Taggart Corporation?

Mr. ROSSBACH. They are all the Taggart Corporation.

A. I cannot answer that without my records.

Q. But in answer to Judge Meaney's question you said that there were occasions when there was evidence of a misgrading?—A. Yes; but whether——

Q. All right. Now, do you apply that answer to those invoices that were directed to the Taggart Corporation?—A. I cannot apply them to any particular invoice at this time, because I don't have the records.

Q. To the best of your recollection did you ever receive word from the Taggart Corporation that there had been a misgrading as a result of which you gave Bruno a debit?—A. I cannot answer that. We get so many of those things that I don't know specifically whether he was involved in any of them.

Q. Well, if you had——

The COURT. Well, do you pay, ordinarily do you pay on the invoice?

93 The WITNESS. Yes, sir.

The COURT. As soon as you receive it?

The WITNESS. Yes, sir.

The COURT. You don't wait for the notification of the grading?

The WITNESS. No; we don't.

The COURT. Not in any instance?

The WITNESS. Well, in some instances where we do business with a man for the first time, we don't know him very well, we won't pay him the full amount of the invoice; we will only pay 75 percent and wait for the mill report to come in. But with people we are doing business with right along, why, we pay him in full.

Q. Nothing further.

Cross-examination by Mr. SOMMER:

Q. Mr. Carrano, you never see any of the paper, do you?—A. No, sir.

Q. And when it gets to the mill it is there inspected, is it not?—A. Yes, sir. I imagine so.

Q. And you don't make adjustments unless the mill informs you that the paper is not according to invoice, do you?—A. Yes, sir.

Q. And in every instance where the mill informs you that the paper is not according to invoice they pay you according to what they find and then you adjust with the dealer?—A. That's right.

Q. That's all.

The COURT. Do you have any method of checking up on their report, or do you just take the mill's word?

94 The WITNESS. Well, we usually take the mill's word. Sometimes we doubt their word or the shipper doubts their word and we either go out there with the packer or investigate for ourselves.

JOHN MARKEY, recalled in rebuttal on behalf of the Government, testified as follows:

Direct examination by Mr. ROSSBACH:

Q. Mr. Markey, you examined the books of the Bruno Paper Stock Company?—A. Yes, sir.

Q. And was your attention specifically directed to those items which might be items of debit?—A. Yes, sir.

Q. In your examination of the books of the T. Bruno Paper Stock Company, did you find any item contained in those books or records to indicate a debit adjustment charge against him by Carrano prior to the date of your inspection?—A. No, sir.

Q. Did you find anything in there to indicate an adjustment of any kind by reason of a misgrading of the paper?—A. No, sir.

Q. Nothing further.

Cross-examination by Mr. SOMMER:

Q. Did you look for it?—A. No, sir.

Q. That's all.

The COURT. If it were there, would your examination have shown it?

The WITNESS. Yes, sir.

Mr. ROSSBACH. Nothing further.

95 By Mr. SOMMER:

Q. Did you examine the check book?—A. No, sir.

Q. Did you examine the payment of the accounts receivable?—A. We examined the ledger under Carrano's name which showed the cash payments as well as the amount debited.

Q. And showed a list of debits unpaid, did it not?—A. It showed cash payments and debits; yes.

Q. Unpaid debits.—A. Yes.

Q. That's all.

Mr. ROSSBACH. Now, if your Honor please I have to rely upon the judgment of the Court in this matter. We have had Mr. Tice from the Taggart Corporation on his way for the last several hours. I did not know that this was going to take the turn of events that it took by virtue of the evidence which was admitted. We need Mr. Tice now for the purpose of identifying the records of the Taggart Corporation, the freight orders in particular, based upon the inspection of these very loads of waste paper.

The COURT. What papers?

Mr. ROSSBACH. Well, maybe Mr. Sommer will admit that they are photostatic copies of the record.

Mr. SOMMER. I will admit that these are photostatic copies of some papers from the files of the Taggart Corporation, but I won't admit their accuracy or I won't admit the fact that they are the results of any inspection or anything else and would object to them going in without being proven as being the actual records made by the person whose name is signed to them.

96 The COURT. Do you admit that they are photographic reproductions of parts of the records of the Company?

Mr. SOMMER. Yes; as far as that goes, that I will admit.

Mr. ROSSBACH. I offer them on that basis.

The COURT. That's all Tice could testify to.

Mr. SOMMER. They were not made by Tice nor made under his supervision.

The COURT. No; but they are part of the official records of the Company, and as such would be admissible as proof of what they allege or purport to present.

Mr. ROSSBACH. And at least, sir, in part made by a man who is now described as dead.

The COURT. Well, that is neither here nor there.

Mr. SOMMER. They wouldn't be admissible as official records because they are not official records.

The COURT. They are admissible as part of the records of the Company, and they would be admissible to prove the subject matter which they contain and would have only such weight as is indicated by that, without the further supporting proof that

they were made by the people by whom they purported to have been made.

Mr. SOMMER. I say that, they being offered for the purpose of proving what is written on them, and there being no one to prove that they were made under their supervision, that they are not admissible.

The COURT. They would be admissible as part of the records, Mr. Sommer, of the Company and would be admitted to prove the contents of the documents as part of the generally regularly kept record of the Company.

97 Mr. SOMMER. Unfortunately I know of no rule, your Honor, that says that every paper in the possession of a company——

The COURT. No; any paper which is part of the regularly kept records of the Company would be admissible. Now, if you are willing to admit that these are a part of the regularly kept records of the Company, all right. If you don't admit it, Mr. Rossbach will be put to his proof. If you admit that they are part of the regularly kept records of the Company I rule that they would be admissible.

Mr. SOMMER. All I can admit——

The COURT. Under the general statutory provision.

Mr. SOMMER. All that I can admit is that they are apparently photostatic copies of papers taken from the files of the Taggart Company.

The COURT. Part of the regular files of the Company?

Mr. SOMMER. That I know nothing about, but they are on stationery of the Taggart Company.

The COURT. No; don't let's quibble. Now, are you satisfied to admit that they are part of the regularly kept records of this Company, photostatic copies?

Mr. SOMMER. I am satisfied to admit that they are photostatic copies.

The COURT. Yes or no to my question, Mr. Sommer.

Mr. SOMMER. No; because I don't——

The COURT. That is categoric. How long will it take Mr. Tice to get here?

Mr. ROSSBACH. He is confronted with travel problems; he is only coming from New York. He should be here momentarily.

98 The COURT. New York City?

Mr. ROSSBACH. Yes, sir.

The COURT. What part of New York City is he coming from?

The WITNESS. 230 Park Avenue, and the office said about an hour ago that he was on his way.

The COURT. We will recess anyway for five or ten minutes.

(A short recess was taken.)

Mr. ROSSBACH. The Government rests.

The COURT. Mr. Tice is not here?

Mr. ROSSBACH. No, sir.

Mr. SOMMER. I have a motion I would like to make, your Honor please, in the absence of the jury.

(The jury withdrew.)

Motion for directed verdict

Mr. SOMMER. At this time, if your Honor please, on behalf of the defendant, I move for a directed verdict of not guilty on all of the counts of the indictment upon the same grounds as I stated at the end of the Government's case and ask that my remarks then be incorporated the same as if given in full length at the present time. And further, insofar as the three counts of the indictment are concerned, namely counts 1, 2 and 5, the evidence, insofar as those counts are concerned is that the mills reported that the merchandise contained in the car was not the same as the invoice and an adjustment of price was made covering those three cars, in accordance with the agreement that existed at the time the order was given. Therefore, insofar as those three cars are concerned, and those three counts of the indictment, there is no proof whatsoever before this Court that there was anything paid over and above the ceiling.

99 Insofar as the other two counts are concerned, those referred to in counts 3 and 4, though there is in evidence a freight slip that contains on it the word "corrugated" the Taggart Corporation was satisfied that the merchandise was the same as set forth in the invoice.

The COURT. I think that while I am not conclusively and absolutely without question convinced of the solidity of the Government's case, I do think it is a question of fact on all five of the shipments and I shall deny the motion.

Mr. SOMMER. I pray an exception.

(Which exception is hereby allowed and sealed accordingly.)

[SEALED] THOMAS F. MEANEY.

(Proceedings resumed in presence of the jury.)

Mr. Sommers summed up on behalf of the defendant.

Mr. Rossbach summed up on behalf of the Government.

Charge of the court

Ladies and gentlemen of the jury:

An information has been filed in this district against Louis Bruno charging him, in effect, with selling certain types of paper over the ceiling price which is established by law.

The mere fact that this information has been returned, of
100 course, is not to be considered by you as proof in any way of the fact that he was guilty of what is charged in the information, because an information or an indictment is not proof of the charge which is made, but it is simply a recital of an accusation which is made against a certain individual.

The information, as I say, alleges that this defendant Louis Bruno sold paper to a broker for a price which exceeded the legal limit set for that particular type of paper. The paper was later forwarded to a mill in New York and some of the other paper was forwarded to a mill in Ohio.

The Government contends that this sale was made by the defendant knowingly, and that he intended to charge and receive a price in excess of that allowed by law which is a violation of the regulation established in accordance with congressional basic authority.

The defendant denies that charge and says that he did sell certain paper, but that he sold it as it was ordinarily sold in the course of the trade, and that despite what the invoice might have said was the price and was the character of the paper sold, the sale really was guided by other considerations, namely the price to be fixed by the establishment of the amount and quality of the paper, as it would be determined on receipt of the paper by the ultimate designated recipients of it. He says in this particular case that he did charge a certain price which was in excess of that which he would have been entitled to charge if he had charged the ceiling prices for the paper actually sent, but that that was adjusted by a debit which was sent him by the man to whom he originally sold the paper.

If that be true, of course, and if he did not sell it with the intent of receiving higher than ceiling price, and did not actually receive higher than ceiling price, there could be no conviction: because the charge is that he actually sold it and intended to receive higher than ceiling price and did receive higher than ceiling price.
101 The Government contends that this debit arrangement was just an afterthought which occurred when he found out that he was found out; and that the debit was not made until after such time as the OPA agent had, at the factory, determined the difference between the alleged quality of the paper and the actual quality of the paper, the actual quality being far beneath in price that which was allegedly sent.

Now, you will recall all the evidence. You will recall that he said that he didn't know what was sent, but he expected to rely on the examination made at the factory. You will recall that one of the cars contained only 400 pounds out of 25,000 pounds of the type of paper which he was supposed to have sent and for which he sent an invoice, and for which he received payment, although he alleges that later there was this correction made. Out of the whole questions of fact you must arrive at that point where you will be able to say to yourself that the evidence indicates that such and such is the truth; and you must determine the truth out of all this evidence.

You are to say what credence you will give to any of the testimony; you are to say what weight it will have, and out of the whole mass of testimony and evidence which has been produced here you must determine the truth and you mustn't guess or speculate about the thing; and you mustn't say, "Well, it could possibly be so." You must find out the truth after considering and comparing all of the evidence.

In your considerations you must remember that this defendant is presumed to be innocent until proven guilty beyond a reasonable doubt, and that the burden of proving his guilt beyond a reasonable doubt is upon the Government and that burden never shifts. The defendant does not have to prove himself innocent,
102 because in our system of government he is presumed to be innocent. Anybody can hurl a charge, but if the charge is made the person making that charge should be burdened with proving it. And that is perfectly logical, and because it is logical and fair and just, our founding fathers adopted that as a prime part of our jurisprudence. So therefore this defendant does not have to prove his innocence. The Government, throughout the whole trial, has the burden of proving the guilt of the accused beyond a reasonable doubt.

Now, a reasonable doubt simply means an indecision which is begotten in a human mind functioning normally and rationally, functioning as it does in the ordinary conduct of the business of its possessor, from a consideration of the evidence. If the evidence begets in your mind a reasonable doubt as to the guilt of the accused, that doubt must be resolved in his favor; and resolution of the doubt in his favor means a verdict of not guilty. But he is entitled to the benefit only of a reasonable doubt; he is not entitled to the benefit of some hazy, remote or fantastic doubt that could conceivably be entertained or which might be begotten of the unwillingness to convict a fellow human being, even though you were satisfied beyond a reasonable doubt of his guilt; and it is not a doubt that would be begotten by fear that you might conceivably make a mistake. So that if you have a

reasonable doubt, resolve it in favor of the defendant, but that is the only kind of doubt which must so be resolved.

The evidence in this case, of course, is circumstantial and circumstantial evidence is valid evidence. In order to be effective it must establish an unbroken chain of facts which lead you necessarily to draw the conclusion of guilt. If, from consideration of the evidence an hypothesis may be formed which would be consistent with a theory of guilt and a theory of innocence, why, then the defendant is entitled to your verdict of not guilty. But if circumstantial evidence leads you to the unassailable and
103 unalterable conviction that this defendant has been proven guilty beyond a reasonable doubt and the only theory that can be based upon that evidence is a theory consistent with guilt and inconsistent with innocence, then of course your verdict in turn must be a verdict of guilty.

As I say, this must not be the result of speculation or conjecture or guess work. You must weigh the evidence and determine the truth, and then to that truth as you determine it, you must apply the law as I give it to you. And if, in the course of the trial, the court or either counsel has attempted to recall evidence, and that differs from your recollection, it is your recollection that must prevail, and not anybody else's. And if, during the trial, the court has ruled on objections made by counsel for the defendant, that ruling was made purely on questions of law with which you were not to be concerned, and must not in any way be taken by you as an indication of how the court feels about the guilt of the accused, because it doesn't matter how I feel about it; you are to pass on the question of his guilt or innocence after you follow out the directions which I give you.

You must not be affected in this case by any bias or prejudice or sympathy which might have been begotten in your mind by anything at all, because you are not to give sympathy verdicts or prejudice verdicts; you are to give just verdicts.

This is an important case. Just because it is concerned with waste paper—it is not a question of doing somebody out of some money. That is not the basis of the trial; the basis is the violation of a regulation which has been established in an attempt to stabilize the economic structure of America, so that under the pressure begotten by war there may not be begotten runaway prices. The fact that somebody may have tried to get money from somebody else—it is not the ordinary case of theft, it is a case of a violation of a regulation established in order to try to keep
104 the economic basis of our life normally fixed so that there won't be any ruinous cost of living for the people of America.

The defendant has asked me to give you a definition of reasonable doubt, and since it coincides with a definition which was officially arrived at after much cerebration by the Court of Errors and Appeals of New Jersey, I think possibly I might adopt the language of that exalted Court and tell you that "It is that state of the case, which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

I consider that to be exalted and high class language for what I have tried to say in simplified terms; not that I had any thought that you might not apprehend the significance of the exalted language, but we speak in common terms.

Of course, when you go to the jury room you must not go there with a mind fixed and determined, come what may; you must go in there with an open mind and discuss the evidence with your fellow jurors; because you are twelve peers of this defendant, selected to pass upon questions of fact and determine his guilt or innocence, and therefore it is part of your function to consult with the others who have been selected with you to act as his final operation of government in this particular instance for this defendant. And in order to convict a unanimous verdict and not a majority verdict is required. You must all agree in order that you may return a verdict of guilty or not guilty. If you cannot agree, if after consideration of the evidence and weighing it and discussing it with your fellow-jurors, your consciences operate and you arrive at a certain determination, than that must remain your determination; and it is a perfectly possible and proper situation that there may be a condition existing where jurors cannot agree unanimously; that is a possible eventuality. But before you can return a verdict there must be a unanimous agreement.

105

You will, of course, weigh the evidence as to each count separately, and you will pass on each count separately. If you were to come back with a general verdict of guilty, it would mean guilty as charged, guilty of all counts in the indictment. But if you find that he is guilty of some and not guilty of others, you may so return your verdict. A general verdict of not guilty will mean not guilty of the whole thing.

Mr. Sommer, is there anything you feel I have not covered in your requests? If so, come up here.

Now ladies and gentlemen, I think that I have fulfilled my function of explaining to you the law which you will take and apply to the facts as you determine them.

This case is an important case. Any case upon which a jury is called to pass upon the question of the guilt or innocence of a

fellow-man is important. Some are more important than others; some acquire importance because of the conditions that exist in the world at the time when a case is being tried. This case arises out of a war situation. That must not affect you, insofar as being rushed along by war hysteria is concerned. It should put you the more on your guard not to be carried away by your feelings or by your patriotism; because patriotism requires a dedication to justice and no amount of flag waving can substitute for that which must be in the heart before real patriotism can be evident. A patriotic person is a just person; a person who in time of stress can still retain his balance and his fairness, and his recognition of the basic principles that mean America.

It is important, I say, because of the times; it is important
106 that because of the times you do justice in order that the American idea may not be just swept aside. You must stand fast, stand fast to principle. We are fighting a war for a principle; therefore we must not yield our principles while we fight for those principles.

I cannot tell you in any better language than the language which was used when you took your oath what your duty is in the present situation, and that was, if you recall it, a true verdict to render according to the evidence, so help you God. That, ladies and gentlemen of the jury is your present duty.

(The jury retired.)

The COURT. I have refused to charge the requests which have been presented by counsel in other language than that which I have used and I feel I have covered all the requests sufficiently.

Mr. SOMMER. I take exception to your Honor's refusal to charge. Request number 21.

(Which exception is hereby allowed and sealed accordingly).

[SEALED] THOMAS F. MEANEY.

(At 5 p. m. the jurors resumed their seats in the jury box.)

The COURT. I have your request, ladies and gentlemen, to clarify that part of my charge which covered intent. I shall try to make evident what I intended to convey. In order that there may be a crime here, there must have been an intent on the part of this defendant to commit that crime, which was to receive a price for the paper which he sold which was in excess of the ceiling
107 price. Now, if actually there had been paid to him more than the ceiling price, but it was the intent and intention of all persons respecting it, not to accept that as the final price necessarily, but to accept it subject to adjustment which would be made upon the examination of the paper actually delivered and the establishment of the price set by law for that paper, that is, if they had the idea that the only price to be received was that

which the law set for the paper actually delivered, and that actually was what was paid, then there was no intent on his part to break the law. But if he sold this paper to the dealer, the wholesale dealer for a price which was above the ceiling price, and that was the price that he intended to get, and if you find as a fact that the only reason he didn't get it was because he didn't get away with it and there was a discovery without his having intent to do the honest decent thing, and that was the only reason he didn't get it, still he would have had an intent to commit the crime and would have effectively committed it when he received above-ceiling price which he intended to receive, if he did so intend, and if the only reason that he didn't get the ceiling price was because he was found out.

In other words, there must be, before you can find him guilty, there must have been in his mind an intention not to set a price and then have it adjusted afterwards according to the truth of the situation, but an intent to fix this price and charge it and get away with it,—an intent to commit the crime, the formation of a purpose in his mind when he did this thing, to get more money for that paper than the ceiling price established by law.

I hope you understand what I mean, because there has been in the defense set up the thought that he did charge the price which was set for something which actually was not delivered, but that the terms of the contract were that if there was any variation, there would then be a revision; and he says that he shipped with that intention, and that he didn't actually himself know what was shipped, but gave orders to his people to deliver what was ordered. Now, you just delve into that from the evidence and consider only the evidence brought out at this trial, and arrive at your determination. Have I answered your question now?

108

The FOREMAN. Yes.

The COURT. Very well.

(The jury retired.)

* * * * *

Defendant's request to charge

21. That the evidence offered to prove the various counts in the information is not sufficient to exclude every other hypothesis save that of guilt and it is therefore my duty to instruct you to acquit the defendant.

* * * * *

109

Exhibit G–10

DEBIT MEMO

Waste Paper Packers Since 1897

JAMES CARRANO'S SONS, INC.

563–5 WATER STREET, NEW YORK, N. Y.

GRamercy 5–3341

To: T. BRUNO PAPER STOCK,
106 McKinley Street, Hackensack, New Jersey.

Debit No. 9715. Grade —. Your Inv. dated 3/31. Car No. CBQ–22160. Date Apr. 13, 1944.

We debit your account as follows:
In Re: Your invoice dated March 31st: #1 Assorted Kraft—35310#.

Amount invoice paid		$635.59
Mill received:		
#1 Mixed Papers, 2005# @ $0.75 cwt. (W. T.)	$15.04	
Old Corrugated Cont., 25990# @ $1.20 cwt. (W. T.)	311.88	
#1 Assorted Kraft, 6735# @ $1.80 cwt. (W. T.)	121.23	448.15
Difference		187.44

110

DEBIT MEMO

Waste Paper Packers Since 1897

JAMES CARRANO'S SONS, INC.

563–5 WATER STREET, NEW YORK, N. Y.

GRamercy 5–3341

To: T. BRUNO PAPER STOCK,
106 McKinley Street, Hackensack, New Jersey.

Debit No. 9716. Grade —. Your Inv. dated 3/30. Car No. PRR–92203. Date Apr. 13, 1944.

We debit your account as follows:

In Re: Your invoice dated March 30th: #1 Assorted Kraft—25620#.

Amount invoice paid		$461.16
Mill received:		
Old Corrugated Containers 24040# @ $1.20 cwt. (W. T.)	$288.48	
Kraft Bag Waste 485# $2.80 cwt. (W. T.)	13.58	302.06
Difference		159.10

111

DEBIT MEMO

WASTE PAPER PACKERS SINCE 1897

JAMES CARRANO'S SONS, INC.

563–5 WATER STREET, NEW YORK, N. Y., GRamercy 5–3341

To: T. BRUNO PAPER STOCK,

106 McKinley Street, Hackensack, New Jersey.

Debit No. 9644–9645. Grade—Your Inv.—Car No.—Date Aug. 10, 1944.

(Duplicate)

We debit your account as follows:
In Re: Your invoice Dated March 22, 1944—PA–68312.
" " " " " " KCS–25293.
#1 Assorted Kraft taken in as Old Corr. Containers.
Car: PA–68312.

Difference in Price, 25110# @ 60¢ cwt	$150.66
Car: KCS–25293.	
Difference in Price, 45115# @ 60¢ cwt	270.68
	$421.35

Assorted Kraft	$1.75
Corrugated	1.75
Difference	.60

112 *Defendant's exhibit*

PURCHASE ORDER

PAPER MILL SUPPLIES

JAMES CARRANO'S SONS, INC.

563–5 WATER STREET

GRAMERCY 5–3340

Our Order No. 3958

(This number must appear on your invoice)

NEW YORK CITY, *March 22, 1944.*

T. BRUNO

106 McKinley Street—Hackensack, New Jersey.

We confirm having purchased from you the following, subject to specifications and conditions printed and written hereon.

Quantity: 5 Cars, #1 Assorted Kraft—#1 Mixed Papers—#1 News—Overissue News—.

Quality: T. S. #1 Soft Brown Kraft—Kraft Bag Waste—#1 Col. Ledgers—#1 Wht. Ledgers—#1 Old Corr. Containers.

Price: Ceiling prices plus F. O. B. cars terms: Usual $1.00 ton loading.

Specifications: B 9694, B 9715.

Date of delivery: Immediately to: B 9716, G 9736.

Ship via:

Remarks: Cars must be loaded in accordance with O. D. T. #18A–1. Please use enclosed bills of lading (Ohio).

Shipment against this order acknowledges acceptance.

113 Our order number and railroad car number must appear on your invoice, before passed for payment.

The above merchandise is purchased subject to mill or consignee's report as to weight, quality, excess freights, etc.

We reserve the right to cancel this order, without notice, if not shipped within the specified time.

This order is contingent upon fires, strikes, embargoes and all other causes beyond control.

JAMES CARRANO'S SONS, INC.

By ——— ———

114 In United States District Court

Assignment of error

Now comes the defendant-appellant, Louis Bruno, and says that in the record, proceedings and judgment aforesaid there is manifest error and for assignment thereof says that:

1. The trial court erred in denying defendant's motion to dismiss the information or in the alternative to direct a verdict of "not guilty" on each of the counts of the information at the end of the Government's case.

2. The trial court erred in denying defendant's motion for a directed verdict of "not guilty" at the end of the entire case.

3. That the trial court erred in refusing to charge the jury as requested by the defendant in his twenty-first request to charge, namely:

"21. That the evidence offered to prove the various counts in the information is not sufficient to exclude every other hypothesis save that of guilt and it is therefore my duty to instruct you to acquit the defendant."

4. The verdict was against the weight of the evidence.

GEORGE R. SOMMER,
Attorney for Defendant-Appellant.

115 In United States Circuit Court of Appeals for the Third Circuit

No. 9055—October Term, 1945

UNITED STATES OF AMERICA

v.

LOUIS BRUNO, APPELLANT

Appeal from a Judgment of the District Court of the United States for the District of New Jersey

Argued January 25, 1946

Before BIGGS, GOODRICH and O'CONNELL, Circuit Judges

Opinion of the court

Filed February 15, 1946

By GOODRICH, *Circuit Judge*

The defendant was prosecuted by information for having unlawfully sold waste paper at a price higher than the ceiling set.[1]

[1] Maximum Price Regulation 30, as amended, issued pursuant to Emergency Price Control Act of 1942.
The price allegedly charged was $1.75 per hundredweight (maximum price for assorted Kraft) while the price that allegedly should have been charged was $1.15 per hundredweight (maximum price for Corrugated).

The information was in five counts, each count charging the sale of a separate carload of the paper. The defendant was found guilty on each count. The one question before us on this appeal is the sufficiency of the evidence to sustain the conviction.
116 Defendant's rights on this question were preserved by appropriate motion at the close of the government's case and again at the close of all the testimony.

The defendant, Louis Bruno, is in charge of a small corporation which buys and sells waste paper. At the time of the events in question it was owned by Bruno's sister-in-law. The undisputed testimony shows that the sales were made as follows: Bruno received, from time to time, orders from a broker in this type of merchandise named Carrano. Carrano had offices in New York. He ordered from Bruno the various cars of waste paper of a type called "Kraft" which, we understand, is ordinary brown wrapping paper. The cars were loaded with paper, the cars were sealed and invoices for the shipment as Kraft waste paper sent to Carrano. The paper did not go to Carrano, however. It was sent in the sealed-up cars, at his direction, to the consignees. There were two concerned in the events here, one in Ohio and the other in New York. One received three of the cars; the other one two. Carano never saw the paper. The invoices were for the ceiling price. It appears, without dispute, that the cars did not contain Kraft paper. They contained some Kraft and some corrugated and, in some instances, miscellaneous waste paper. All this is clearly established and no one denies it. If this was all we had to the case a clear violation would, obviously be proved. We have an order for Kraft paper, a shipment of inferior quality invoiced at the Kraft-paper price and then payment by Carrano at invoice price.

That, however, is not all there is to the story from the government's witnesses. It is also proved that the orders from Carrano to Bruno and the orders from the consignees to Carrano were subject to check by the consignees at destination. According to the witnesses, still for the government, this was in accordance with business custom. It appeared that when an order was given by a broker to a shipper, such as Bruno, the shipper in filling the
117 order would invoice it to the broker in accordance with the terms of the order. Then the broker paid the shipper, as Carrano did here. If the shipper were a stranger to him he might hold back part of the price until the factory reported on quality. But if the shipper had an established relationship the broker would advance the money to the shipper according to invoice and then charge it back to him, or deduct it on the next payment if the factory reported a deficiency in quality. The shipper was not compelled to accept the factory's report on quality. He had

a chance, if he wished, to call back the shipment or direct its consignment elsewhere. It was also in the testimony that in times like the present, with paper very scarce, the shipper would customarily fill up the car with whatever he had on the assumption, as proved by experience, that the factories were very glad to have any kind of paper they could get.

Both the representatives of the consignees who have testified and Carrano, the broker, were clear and explicit in their statements that the ultimate price paid was not more than ceiling. All of this testimony, it should be repeated, developed in the government's case in chief.

What basis have we for saying the jury was at liberty to disbelieve all this explanatory testimony and find the defendant guilty as charged? We are not proceeding on the theory that the government having presented certain persons as witnesses is irrevocably bound by what they say.[2] Without that, however, it is the government's burden to establish the guilt of the defendant and it must win on the strength of its own case, not the weakness of that of the accused. The method of transacting business in this fashion does not startle us. While we do not wish to press the limits of judicial notice to extremes, we do
118 know it to be the fact that some businesses are conducted in this way and that the business of selling waste paper is also included does not seem inherently improbable.

The government points to two pieces of testimony which it thinks demolish the explanation of innocence. When an OPA investigator went to see Bruno and look at his books he found that the entries in which these shipments were charged to Carrano were for a sum less than the invoices sent Carrano indicated. The explanation that Bruno gave to the investigator was that this was the way Bruno had augmented his salary. This "commission" had been arranged with his brother he said. The books, themselves, according to the testimony, showed neither payments of the invoices by Carrano nor evidence of charges back, by Carrano, because of discrepancies between invoice and shipments.

This bit of testimony, it may be granted was suspicion creative. But concerning what does it create suspicion? It may well tend to discredit Bruno as a witness by reason of its improbability. It may also tend to show that he was wrongfully taking money from the concern by whom he was employed. But he was not being prosecuted for that. We do not see that it bears one way or the

[2] This doctrine is severely criticized in 3 Wigmore on Evidence (3rd ed.) 385 § 897. "The primitive notion, that a party is *morally bound by the statements of his witnesses*, no longer finds defenders, although its disappearance is by no means far in the past. In the early 1800's the judges were still engaged in repudiating this false notion of the basis of the rule against impeaching one's own witness: [citing early precedents]."

other on the question whether he sold waste paper above ceiling prices.

The other circumstance is that debit memoranda issued by Carrano against the shipments, or some of the shipments, involved in the transactions which were the subject of prosecution, came after it was known that an OPA investigation was in progress. This fact has some significance it may be granted. The significance, however, is greatly decreased when it is observed that the time between the OPA inspection and the memoranda is comparatively close.[3] There was testimony, also, that in this particular period reports from the factory to the broker were not as prompt as
119 they were in less confused times. As against this circumstantial evidence, Carrano had testified that he always made the charges back when the goods did not correspond with invoice.[4]

There is inferential innuendo, although not outright statement, that perhaps the broker and the buyers as well as the shipper were lacking in frankness and that possibly all may have been involved in purchases and sales above ceiling prices.[5] We quite realize the difficulty under which the government agency works in trying to get its facts, the revelation of which may be unpleasant to the several parties of a transaction. Nevertheless, if a man is to be convicted of a crime it must be proved, not left to conjecture or suspicion. Disregarding altogether defendant's testimony here we still cannot find in the testimony of the government's witnesses or the permissible inferences to be drawn therefrom enough to sustain the conviction of this defendant.

Reversed.

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[3] Thus Francis C. Duffy of the OPA testified that on April 6, 1944 he graded and inspected cars, P.R.R. 92203 and C.B.Q. 22160. The debit memos from Carrano to the Bruno concern, in the exhibits, show a date of April 13, 1944 for both.

[4] We have only a small sampling of all the debit memos passing between the parties in the general course of their business. It is therefore interesting to note, and of more than incidental significance, that Bruno's testimony that on occasions the material billed as No. 1 Assorted Kraft was better stock is borne out by at least one of the exhibits in the record. The memo of April 13, 1944 on car No. P.R.R. 92203, referred to in note 3, showed that the shipment, in addition to corrugated which is inferior to No. 1 Assorted Kraft, contained Kraft Bag Waste which is superior stock with a price considerably higher than No. 1 Assorted Kraft. The Kraft Bag Waste is billed at $2.80 cwt. of which $0.05 apparently represents a charge for handling, etc. The ceiling on the No. 1 Assorted Kraft as pointed out in footnote 1 is $1.75 cwt. plus a similar small charge for handling, etc.

[5] In addition to lack of affirmative evidence on this point, we must bear in mind the facts of footnote 4 as well as the undisputed nature of the testimony by the government's own witnesses contra. The rather primitive bookkeeping and unbusinesslike merchandising methods of the Bruno concern are chiefly responsible for these vague intimations by innuendo.

120 In the United States Circuit Court of Appeals for the Third Circuit

No. 9055—October Term, 1945

UNITED STATES OF AMERICA

vs.

LOUIS BRUNO, APPELLANT

Present: BIGGS, GOODRICH, and O'CONNELL, Circuit Judges

On Appeal From the District Court of the United States for the District of New Jersey

Judgment

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed.

By the Court.

GOODRICH,
Circuit Judge.

FEBRUARY 15, 1946.

(Endorsements:) Order Reversing Judgment. Received and filed, Feb. 15, 1946. William P. Rowland, Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, Third Judicial Circuit, Sct.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief, as constituting the portions of the record before this court at argument; and proceedings in this court, in the case of United States of America vs. Louis Bruno, Appellant, No. 9055, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 22d day of March in the year of our Lord one thousand nine hundred

and forty-six, and of the Independence of the United States the one hundred and seventieth.

[SEAL] (S) WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

121 Supreme Court of the United States

Order allowing certiorari

Filed May 13, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1946